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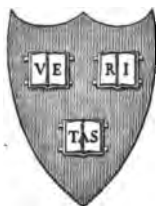
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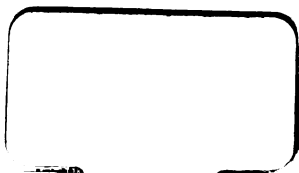
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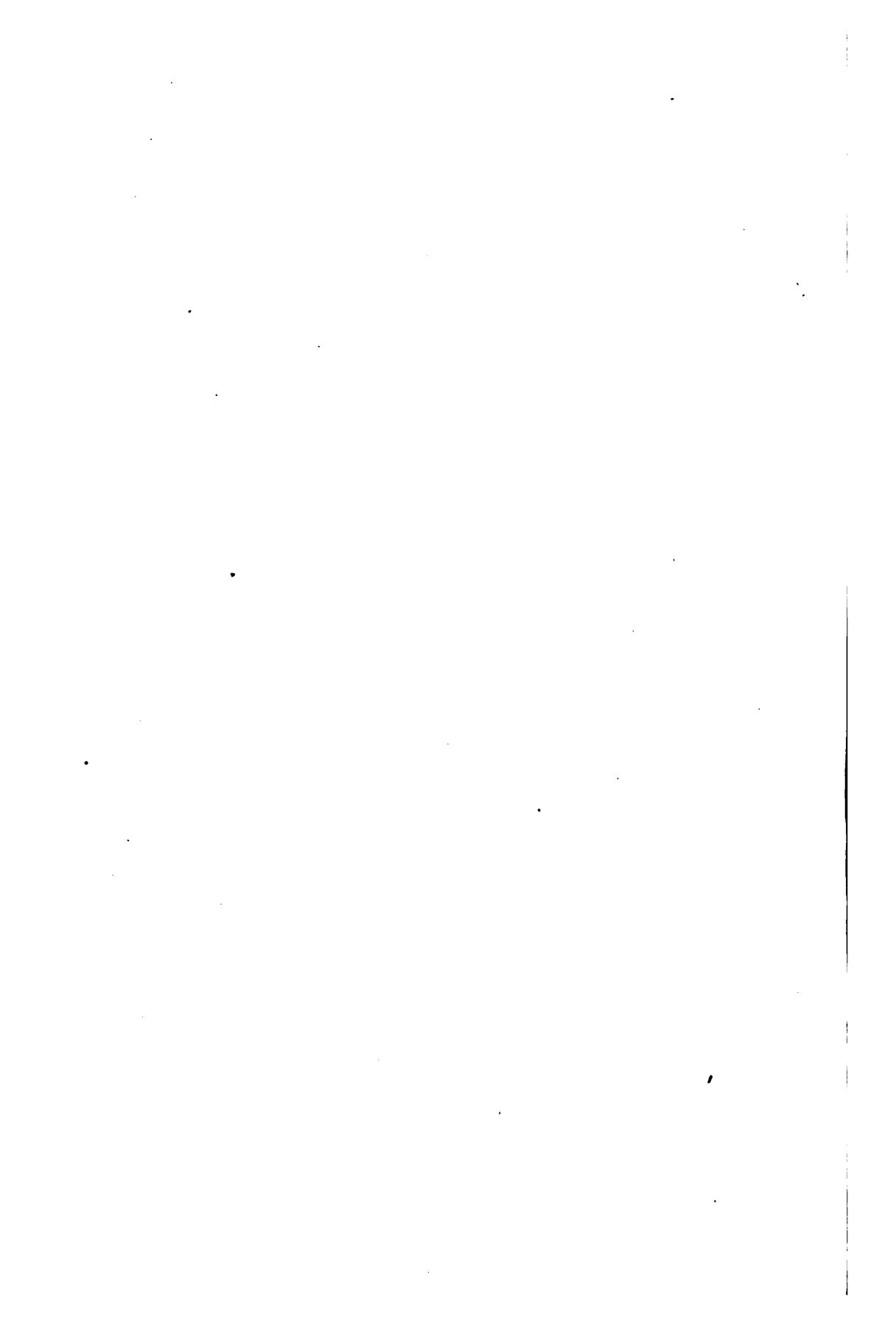


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THE POLITY  
OF THE ANCIENT HEBREWS

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MAYER SULZBERGER

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The following lectures were read before the Dropsie College for Hebrew and Cognate Learning, Philadelphia, in the month of March, 1912. They are mere studies in the public law of the ancient Hebrews. The author hopes to supplement them by further studies on other branches of that interesting system of jurisprudence.





## THE POLITY OF THE ANCIENT HEBREWS\*

BY MAYER SULZBERGER, Philadelphia

### I

IN accepting the flattering invitation of this learned institution to deliver a course of lectures on the Institutes of Government of the Ancient Hebrews, the natural reluctance to assume a novel duty was overcome by the earnest suggestion that at least so much was due to the cause and to the venerated Founder of this college. In the course of a long and active life, he always found time and opportunity to further the cause of Hebrew learning, and this munificent endowment by his last will and testament was the fitting crown upon his lifelong labors in the cause.

The western world—the world of modern civilization—has always felt and evinced a transcendent interest in the polity of the ancient Hebrews. The books in which it is recorded were once universally accepted as literally inspired, and although the modern course of thought has tended to raise important dissents from this view, it is still widely accepted, and even those who reject it have contributed some of the most valuable aids to the understanding of the biblical literature.

\*A course of four lectures delivered before the DROPSIE COLLEGE FOR HEBREW AND COGNATE LEARNING, March 18, 21, 25 and 28, 1912.

A phenomenon so remarkable cannot be merely casual or accidental. Whereas the legislation of the great Asiatic empires of India and China has merely aroused the curiosity of the scholar, the polity of the Hebrews has awakened the earnest attention of learned and simple, of cleric and layman, of statesman and poet. There is a feeling that the ancient Hebrew ideals of government concur with our own in their deepest meanings. Absolute autocracy, the lordly disregard of the humble, the exclusive concern of the individual for himself, these are all attributes which appear to us to be present in the great and powerful of Eastern lands, and they repel us. In the Hebrew polity the ideals are the reverse. The King was to live for his people, was governed by a fixed law which he had not made and which he could not unmake, and was checked by a national council, representative of the people.

The judicial function was, as time progressed, severed from the general sovereignty and became a power which owed allegiance to the law above all other masters, anticipating in this respect that distribution of sovereign functions which is an essential attribute of modern constitutions.

Aliens were no longer looked on as enemies, but were to be treated with fairness and regarded as friends. Slavery was abhorred, and the abuses of capitalism were deplored and restrained.

A few years ago I had the honor to deliver a lecture before the Jewish Theological Seminary at New York, in which I endeavored to show that this trait was present in the Hebrew people from the earliest times; that the aversion to absolute kingly authority was not modern or transitory, but could be traced back historically to the election

and control by the people's representatives of the kings from the very first of them, Saul, to the very last, Zedekiah; that is, through a period of more than four centuries. I also endeavored to demonstrate that this representative council, which had essential qualities of modern parliaments, was for long known as the '*am ha-areš*, a technical term which, in the mutations of time and circumstance, acquired other and totally alien connotations, until at last the true meaning was forgotten. The very simplicity of the words, the ease with which a mere tyro can translate them with the help of a dictionary, became, in later times, a powerful obstacle to the recovery of the true meaning.

On that occasion I said (*The Am-ha-aretz*, Philadelphia (Greenstone), 1910, page 58): "The Parliament of Israel had its humble beginnings at the city gate, where the elders of the town, 'comers to the gate,' sat to hold the Town Council and the Municipal Court. Gradually there was evolved, from this institution, the tribal '*Am*, which dealt with the larger matters of the district inhabited by the tribe. Friendliness among neighbors, and the necessity of defense against enemies, produced alliances between several tribes, and finally there resulted a union of all or nearly all the tribes of Israel. Then only could there have been formed a general gathering of delegates, an '*Am* of the land, our '*Am ha-aretz*."

Further investigation has not resulted in finding evidence that a tribal '*am* ever existed. Perhaps such evidence may be forthcoming in the future, but it is just as likely, and even more so, that the actual development of the '*am* did not follow the symmetrical and logical course I had marked out for it. Life with its rich and varied aspects has a way of disappointing the most rigid and exact logical

processes. This fact, however, in no wise renders doubtful the main thesis that the *'am ha-areš*, a great representative body, played an important part in the government of ancient Israel.

This present course will be limited in the main to the examination of the "city gate," where the council (*zeḳenim*, *be'alim*, *anashim*) sat, not only to hold the Town Council and the Municipal Court, but to exercise much higher powers. I shall endeavor to show that in pre-Israelite times Palestine was composed of many little city kingdoms, independent of one another, sometimes leagued together for offence or defense, sometimes arrayed against one another. They lacked large ideals. Their heaven, like their earth, was parceled out among many, each with limited local jurisdiction. Gods and Kings alike were profusely numerous.

Upon them came down the Hebrews with their large religious and national ideas. They believed at least that JHVH was the true and only God who had rule over Palestine, and that all other Gods were in that domain rebels and usurpers. The heathen's thought that the land belonged to many gods and many kings came in conflict with the Hebrew notion of Canaan as one land, the portion of one God (JHVH), for the use of one nation, JHVH's own, his *helek* (Deut. 32, 9), his *segullah* (Exod. 19, 5).

"When Elyon divided to the nations their inheritance,  
When he separated the sons of Adam,  
He set bounds for the (seventy) peoples, (Gen. 46, 27).  
Their number even as the B'né Israel  
JHVH's portion is his people,  
Jacob the lot of his inheritance.  
He found him in the desert land,

And in the waste, howling wilderness;  
He led him about, he instructed him,  
He kept him as the apple of his eye.  
As the eagle stirreth up her nest,  
Fluttereth over her young,  
Spreadeth abroad her wings,  
Taketh them,  
Beareth them on her wings,  
So JHVH alone did lead him;  
With him there was no alien God" (Deut. 32, 8-12).

The Hebrews came as an army. Their purpose was to wrest a country from its possessors, a task that could only be accomplished by war. If they had hopes of sudden and complete conquest, these were soon dissipated. The strife went on for decades, if not longer, and even at the end the goal was never quite reached. Some parts of the country always continued in the possession of the natives, while in others a mode of compromise was found which enabled the natives and the invaders to live together in peace. While on the march it was well for Moses to pray JHVH to scatter Israel's enemies and to protect the myriads (divisions) and regiments of the Hebrew armies (Num. 10, 35-36), but when they were being settled on the land, they were confronted with the many perplexing problems with which peaceful governments must deal.

The task of ruling a country is far more complex than that of governing a camp. The compactness and the unity of the camp are its essential features, while the former demands the scattering of the people into a thousand several places, separated from each other by obstacles, natural and artificial.

The actual condition of the country and the people, old and new, had to be considered in framing the new government. That they met the difficulties and practically overcame them, history shows. The new territory was in the end welded into a solid Hebrew state. The city-kings and city-gods disappeared, and in their place came a true nation and a national God—a conception which ultimately expanded more and more until the idea of one humanity and one God became deeply rooted.

Our task in this course is to ascertain what were the early stages of this development, dealing in the first place with the common theory of tribal organization, ascertaining its true nature, and showing that its duration was less than is usually believed. We shall next examine the pre-Israelite city-states and their mode of government, following this up by a view of the Hebrew statesmanship which, retaining the form of organization of city-states, materially modified its essence. The notices preserved in the Bible of the actual exercise of the jurisdiction by the Hebrew cities will next be considered, to be followed by a consideration of the legal provisions concerning these Hebrew city-councils which still survive in the Pentateuch. And lastly we shall endeavor to show that by degrees the national religious idea was spread by the Levites and the *Nebiim*, until a true Federal state evolved, with incidental remarks as to the mode by which these great changes were effected.

I need scarcely say that in an inquiry like this into obscure points of Hebrew Constitutional history, any language I may use must not be construed into dogmatic assertion. We are all fellow-students, earnestly striving for light and knowledge, with the consciousness that the task

is difficult and that the work of many minds is required to give it even a semblance of completeness.

The common opinion undoubtedly is that the Hebrew commonwealth was formed by the union of twelve tribes (*mat̥ot*, *shebatim*), which were subdivided into clans (*mishpahot*), the latter into families (*bet-abot*), and these in their turn were composed of warriors (*gebarim*).

The classical text on the subject is in the seventh chapter of Joshua, which relates that the war for the conquest of Canaan was auspiciously begun by the capture of the walled city of Jericho; that by Divine order, its inhabitants (save a few favored for cause) were doomed to extinction, and, moreover, it was commanded that the victors should avoid taking booty, since it was *herem* and as such would contaminate not only the taker, but the whole camp (Josh. 6, 18). A soldier yielding to temptation captured and hid away a goodly Babylonish garment, two hundred shekels of silver, and a golden ornament of fifty shekels weight.

Instantly the Divine favor was withdrawn. The city of Ai, the point of next attack, which seemed easy of capture, resisted and defeated the Israelite force. Joshua, perturbed, inquired of the oracle and was informed that the disfavor was due to the breach of the order against booty. It became his task to discover the guilty person. The mode of consulting the oracle is given at length (Josh. 7, 16-18). A series of questions is asked, and the oracle, through the priest in charge of the Ark of the Covenant, makes reply.

Incidentally, too, we learn the scheme of army organization. A representative of each tribe being brought before the Ark, the question was put: To which of these

tribes (*shebatim*) does the offender belong? The answer was, *Judah*. Thereupon the representatives of the several clans of the tribe of Judah were placed before the Ark, and the question propounded: To which of these *mishpahot* does the offender belong? The answer was, *Zerah*. The representatives of the several families of the Zerah clan being placed before the Ark, the next question was: To which of these *bet-abot* does the offender belong? The answer was, *Zabdi*. Thereupon the *gebarim* (individual warriors) of the Zabdi family, being put before the Ark, the question was put: Which of these *gebarim* is the guilty man? And the answer was, *Achan*, ben Karmi, ben Zabdi, ben Zerah, of the tribe (*matteh*) of Judah. The text is slightly defective, but a careful reading of it justifies this translation.

We have here a perfect scheme of organization: tribes (*matot*, *shebatim*), clans (*mishpahot*), families (*bet-abot*), *gebarim* (individual soldiers).

It does not, however, stand alone. The scheme put before Moses by Jethro is different. It divides the hosts into thousands (*alaphim*), hundreds (*me'ot*), fifties (*hamishim*) and tens (*'asarot*) (Exod. 18, 21).

At the selection of Saul for King (I Sam. 10, 17-25) at Mizpeh the people were divided into tribes (*shebatim*) and clans (*mishpahot*). The *bet-abot* are not mentioned, Saul being picked out of the *mishpahah* of Matri. And there is still another difficulty. In verse 19, the word *alaphim* is used for the *mishpahot*, a phenomenon which occurs also in the story of Gideon (Judges 6, 15), who says that he belonged to a poor clan (*eleph*). To add to the confusion, the passage Numbers 1, 16 seems to identify



the *nes'im* of the tribes with the *rashim* of the *alaphim*, and would make the latter word mean tribes.

In later times the word *eleph* obtained a meaning even more extended. When Saul was eager to seize David, he promised to hunt him out of the fastnesses or districts (*alaphim*) of the Judean wilderness, while Micah 5, 1 speaks of the city of Bethlehem as among the cities (*alaphim*) of Judah.

Whether the systems of Joshua (7, 14-18) and of Jethro (Exod. 18, 21) existed contemporaneously, may be incapable of determination on the evidence, but the fact seems scarcely probable. It may be a fair conjecture to believe that the tribal system came first, and as time went on the organization of the army became more perfect. So, likewise, as the Hebrew army occupied and settled the land piecemeal, an organization quite unlike the military organization in either shape would take its place.

The Jethro organization being military, pure and simple, would go down first, while the tribal organization, founded on notions of kinship and to a certain extent by neighborhood settlement, would last longer. As the civil government became more and more powerful, it would easily appropriate old tribal military terms and attach them to officers and circumstances of civil life, creating at the same time new meanings, wholly or partially unrelated to their original meaning.

So only can we explain the confusion in the term *eleph*, which, meaning at first a regiment of soldiers, is in antiquarian records confounded now with tribe, now with clan, and in the speech of the day comes to mean a district of land, or even a city.

On this principle Jethro's scheme becomes plain. He would form regiments of a thousand (*alaphim*), divide them into companies of a hundred (*me'ot*), divide each of these again into half-companies of fifty (*hamishim*), and then subdivide the latter into squads (corporal's guards) of ten, each division and subdivision having a proper officer (*sar*).

Some such arrangement appears indicated in Judges 20, 10, where a squad of ten men out of every hundred (company) are designated to provision the army, and the statement is incidentally made that there are companies (*me'ot*), regiments (*alaphim*), and divisions (*rebabot*, 10,000).

There are other passages confirming this view. In the Song of Moses (Deut. 32, 30) the poet asks: "How should one chase a regiment (*eleph*) or two a division (*rebabah*)?" And in Deut. 33, 17, the military prowess of the house of Joseph is based on the *rebabot* (divisions) of Ephraim, and the *alaphim* (regiments) of Manasseh. The enmity conceived by Saul for David is related as having originated in the former's mortification at the extravagant language of a popular song which represented David as slaughtering whole divisions (*rebabot*), while Saul had only decimated regiments (*alaphim*) (I Sam. 18, 8).

Perhaps even the term *hamushim* (soldiers) originated from these half-companies of fifty (Exod. 13, 18; Josh. 1, 14; 4, 12; Judges 7, 11). And the word *sar* long continued to be applied to military officers (Isai. 21, 5; II Chron. 32, 21).

If this theory be correct, we are entitled to believe that as early as the time of Saul the tribal system had so weakened that they used *mishpahah* and *eleph* indifferently

for each other and did not keep *bet-abot* in mind, and that in later times there were still wider divergences from the ancient meaning.

The whole history of the *shophetim* also tends to confirm this view. Gideon, whose connection with any other tribe than Manasseh is not made clear, was early considered the *shophet* of all Israel. And the same is true of his son Abimelech (Judges 9, 22), as also of Jephthah (Judges 11, 11). More significant still is the fact that we are not told to which tribe Shamgar, Deborah, Ibzan, or Abdon belonged, an omission scarcely explicable if we assume that each tribe had some kind of a government of its own within its own territory.

There is no difficulty in concluding that the real tribal organization disappeared with the conquest and survived only in names and in fragments of institutions. As early as the time of David, the census lumps the ten tribes together as Israel (II Sam. 24, 9; I Chron. 21, 5-6).

Solomon's government seems to have ignored tribal authority. His twelve *niṣṣabim* had jurisdiction over territory, but their tribal connection is not mentioned (I Kings 4, 7-19). Jeroboam was Solomon's supervisor of labor for Beth-Joseph (I Kings 11, 28), which seems to have been an alternative name for all Israel outside of Judah-Benjamin (I Kings 11, 28). The narrative concerning the latter's strange investiture into the kingly office by the prophet Ahijah would seem to allow of no other conclusion (I Kings 11, 31). And finally, when the rebellion breaks out, there is no mention of any tribe. All Israel (*kol-Israel*) shouted: "To your tents, O Israel!" (I Kings 12, 16).

Still more significant of the effacement of tribal lines is the fact that we do not know to which tribe belonged Omri, Ahab, or Jehu, the three most notable kings of the northern line. The evidence seems conclusive that this effacement of tribal lines had gone on for a few centuries, that we see the movement in progress in the Song of Deborah, and that it was nearly accomplished by the time of the priest-*shophet* Eli. At all events, the tradition was that Deborah judged not a tribe or a small group of tribes, but the *B'né-Israel* (Judges 4, 5) and that Eli (I Sam. 4, 18) and Samuel did the same (I Sam. 7, 16-17). And although it may well be that some of the military chiefs, called *shophetim* (judges), ruled only a section of Israel, the evidence that this rule was tribal in its nature is very scanty. Jephthah, one of the most renowned of them, was the head of Gilead, which was not a tribe but a territory. At all events, the oldest traditions of Israel were that there was in those old times a national union with a national head.

Assuming, then, that this military organization for conquest became gradually modified as the invasion grew more and more successful, it becomes interesting to learn how and why such changes took place.

The objective purpose of Moses was to overcome and possess Canaan, the territory between the Mediterranean and the Jordan, and to establish therein the *B'né-Israel* as a unified commonwealth with righteous aims and sound laws. For reasons which seemed to him good and sufficient, he determined that the attack should be made from the east, by fording the Jordan. In a friendly way he requested the powers controlling the eastern territory to grant him leave to pass. This being refused, he fought his way, and

thus the war began in a country on which he had no hostile designs and at a time earlier than he had planned. Sihon, king of the Amorites, was the first to go down before the invaders. At the battle of Jahaz he was defeated, and in consequence lost his land from Arnon to Jabbok. Israel took all his cities with their *banot* and occupied them (Numb. 21, 24-25, 32). Og, king of Bashan, was the next to suffer. At Edrei he was totally routed (Numb. 21, 33, 35), and Israel took possession of his domain, as it had before dealt with the Amorite land (Numb. 21, 34).

The advance was then made to the Jordan, opposite Jericho, from which point it had been designed to begin the war.

At once the important question obtruded itself, whether it were wise to abandon the conquered territory for an enemy to re-occupy, or to retain it and thus enlarge the portion of land which would fall to each. The B'né Reuben and the B'né-Gad offered to send their military contingent to aid in the conquest of Canaan proper, and to waive their share of that land, if the territory east of Jordan were assigned to them as their portion. Their offer was accepted and they, together with the half-tribe of Manasseh (which appears to have joined them in their project), received the territory which had been reft from Sihon and from Og, with the cities thereof (Numb. 32, 1-33), their dependencies (*banot*) (Numb. 32, 42), and their villages (*hawwot*) (Numb. 32, 41), or *hašerim* (Josh. 13, 28).

The momentous nature of the question facing Israel was soon realized. Two tribes and a half were to leave their wives, their children, and their cattle in the conquered territory, while the active warriors, all the men between

twenty and fifty years of age, were to leave the country to carry on in the land west of Jordan a war that might last for years. The necessity of providing for the government of this East-Jordanic territory was obvious. Order had to be preserved, enemies guarded against, quarrels adjusted. The duty naturally devolved on the *zekanim*, the men over fifty, who had become exempt from active military service in the field. Circumstances did not favor the immediate establishment of a permanent tribal government in the East-Jordanic territory. The vigorous and ambitious military chiefs were about to depart on a long and perilous expedition; the country was already organized into a series of city-states or district states, and, however faulty the system, it had worked somehow. As a temporary arrangement it may have commended itself to the best minds of Israel. This nascent nation had great ambitions but no past history. It had never owned land or cities, but it sacredly cherished ancient ambitions which told of divine promises of both.

Now it suddenly and unexpectedly became the master of these little city-kingdoms.

Sentiment doubtless soon became active. Men recalled the legends of old, that the first man who left Eden built a city (Gen. 4, 17); that the patriarch Abraham sojourned in the city of Gerar (Gen. 20, 1); that Isaac was concerned in the founding of Beersheba (Gen. 26, 33), and that Jacob had stopped at Luz and had given it a new name (Gen. 28, 19).

But whatever the power of sentiment, there was always in Israel a certain practical judgment which regulated it. The great obstacle to the adoption of the mode of government which had satisfied the aborigines, was that Israel

was in its governmental notions republican and not monarchical; in its social views democratic and not aristocratic. The Canaanite city-states were founded on principles which revolted the Hebrews.

The twelfth chapter of Joshua (vv. 9-24) gives us a list of thirty-one city-states, each governed by a king (*melek*) and the inference is not remote that the cities east of the Jordan were similarly governed, Sihon and Og being overlords, kings of the federations of city-states, each of which had a kinglet of his own. The expressions "Heshbon and all her cities" (Josh. 13, 17), "the cities and their villages" (Josh. 13, 23, 28) used of places east of Jordan give support to this view.

Such a city-state was composed in general of at least three constituent elements: the fortified city proper, with walls and towers of defense; several neighboring towns, and a number of outlying villages. The fortified city itself sustained the relation of mother (*em*) to the neighboring towns and villages. The towns were called daughters (*banot*), and the outlying villages *hawwot* or *haserim*.

In the absence of powerful kingdoms, the formation of such small city-kingdoms, or more properly, district kingdoms, was inevitable. The relatively small territory of fertile land between the Mediterranean Sea and the Eastern Desert was then, as now, subject to incursions from the Bedouins in years when a decreased rainfall narrowed their grazing-ground. Driven westward by the mere instinct of self-preservation, they would swoop down upon the settled land and strip it bare. The shepherds and agriculturists had to take measures to save themselves. Of this necessity the fortified city was born. The inhabitants of villages and towns were compelled to have a protected place of re-

fuge where their lives and as much of their property as they could store would be safe against the maurauding hordes. This they found in the walled city, wherein the inhabitants of a district within easy call could promptly gather for defense against the dreaded enemy.

These overmastering necessities affecting both sides created an irrepressible conflict, which was waged for ages and the memory of which is preserved in the undying hatred denounced against the nomadic Midianites and Amalekites (Judges 6, 1-6; 7, 23-25; Isai. 9, 3 (4); Exod. 17, 16; Deut. 25, 19).

It is probable that the kings of these numerous city-states governed despotically by the aid of ministers of their own selection. If they were aided or restrained by a considerable body of councillors, representative of the community, the evidence of the fact does not survive in our records.

However this may be, the advent of Israel swept away all these kinglets. Whenever a Hebrew army captured and occupied a city, a government by elders was at once established.

That this change was disagreeable to the aborigines who continued to live alongside of the invaders, is probable. Of this state of feeling there is perhaps a hint in the narrative recording Abimelech's attainment of the office of city-king of Shechem. The persuasive argument in his favor was the interrogatory: Do you prefer to be ruled over by seventy or by one? (Judges 9, 2).

Such a disharmony between the aborigines and the invaders could not have been exceptional. The notes on the subject are too numerous to be disregarded or to be treated lightly, and they establish the fact that the conquest



was partial in this, that the aborigines who survived the wars lived peacefully with and alongside of the conquerors.

Here are specimens of texts supporting this view: The B'né-Judah could not drive out the Jebusites from Jerusalem, but the Jebusites dwell there with them to this day (Josh. 15, 63).

The B'né-Benjamin did not drive out the Jebusites from Jerusalem, but the Jebusites dwell there with them to this day (Judges 1, 21).

Judah could not drive out the inhabitants of the valley (Judges 1, 19).

Manasseh did not drive out the inhabitants of Bethshean and her *banot*; nor of Taanach and her *banot*, nor of Dor and her *banot*, nor of Ibleam and her *banot*, nor of Megiddo and her *banot*, but the Canaanites remained in this district (Judges 1, 27).

Ephraim did not drive out the Canaanites who lived in Gezer (Judges 1, 29).

Zebulun did not drive out the inhabitants of Kitron, nor those of Nahalol, but the Canaanites continued to dwell with them (Judges 1, 30).

Asher did not drive out the inhabitants of Acco, nor those of Zidon, nor those of Ahlab, nor those of Achzib, nor those of Helbah, nor those of Aphik, nor those of Rehob; but the Asherites dwelt among the Canaanites (Judges 1, 31-32).

Naphtali did not drive out the inhabitants of Beth-Shemesh, nor those of Beth-anath, but he lived among the Canaanites who paid him tribute (Judges 1, 33).

The Amorites dwelt in Mount Heres, in Aijalon and in Shaalvim, but became tributaries (Judges 1, 35).

From this mass of evidence it must be concluded that the Hebrew conquerors found it necessary or agreeable to adopt a policy of conciliation and compromise, in order that the natives who were either too strong or too useful to be eliminated, might live content with the new institutions and customs introduced by the B'né-Israel.

It thus appears that at the very outset of its national career, Israel had to learn how to deal wisely and justly with the natives, who had different notions of government and of religion and who, by the advent of the conquerors, had practically become aliens in their own birthplaces.

The solution of the difficulty, so far as governmental features were concerned, was found in the doctrine that strangers are entitled not only to equal rights, but to genuine respect and brotherly affection.

Having brought the Hebrews into contact with the natives and their organized governments, and having suggested that a policy prevailed which may be called remarkable, if not unique, for those times and climes, we shall reserve the detailed consideration of the subject for our next lecture.

## II

The problems which beset an invading army are radically different from those which confront a settled population. In the one case the purpose is aggression, in the other defense. We have seen that the Hebrew conquerors of Eastern Palestine had to face both kinds of difficulties. They were settling in the east and conquering in the west. Hence, notwithstanding the disadvantage plainly accruing from a policy of compromise, they adopted it as the lesser

evil and arranged to allow the natives to live with them in the enjoyment of rights. Means to procure general favor for this course were not wanting. Legend and history could be invoked in its behalf. The patriarch Abraham is made to say to the *'am ha-areš* of the Hittites: I am a resident alien (*ger we-toshab*) (Gen. 23, 4); Moses declares that he has been an alien (*ger*) in a foreign land (*ereš nokriyah*) (Exod. 2, 22; 18, 3). In his proposed covenant between JHVH and Israel, he expressly recognizes the alien (*ger*) in the camp (Deut. 29, 10), and in his farewell address, delivered after the capture of the cities east of Jordan, he provides for national reunions in the capital of the future commonwealth, and includes among the congregants the alien (*ger*) from the cities (Deut. 31, 12). So likewise Joshua, when he read the whole law before the whole congregation, did not forget to procure the attendance of the *ger* (Josh. 8, 35).

That the sentiment behind these utterances was strong may be inferred from its persistence in later times. David's friendly relations with foreigners is frequently alluded to. There is no finer instance of loyal fidelity than the devotion of Ittai of Gath, the captain of David's body-guard, to his royal master. About to flee from the west-land in consequence of Absalom's rebellion, he said to Ittai: Why shouldst thou an alien (*nokri*) share my fallen fortunes when the king that is would gladly retain thee in thy office? Swearing the great oath (*hai JHVH we-he adoni ha-melek*), Ittai replied: "My place is with my lord the King, for death or for life!" and David said: Pass on. Between these great souls scant speech sufficed (II Sam. 15, 19-22).

So too Solomon, in his great dedication prayer, remembered the *nokri* of distant lands (I Kings 8, 41-43;

II Chr. 6, 32. 33), and even took a census of the *gerim* in the country which ascertained that their number exceeded 150,000 (II Chr. 2, 16 (17)).

Great social facts like these necessarily find expression in legislation, which is in the main the mere crystallization of custom. Accordingly we find that the institution of the Sabbath is to give rest not only to Israel but to the *ger* [who is in thy cities] (Exod. 20, 10; Deut. 5, 14); or simply to the *ger* (Exod. 23, 12).

Benevolent provision for the poor comprehends the *ger* as well as the Israelite (Deut. 14, 28. 29; 26, 11-13).

Oppression of the *ger* is insistently reprehended.

"Do not vex a *ger*, nor oppress him, for ye were *gerim* in the land of Egypt" (Ex. 22, 20 (21); 23, 9; Lev. 19, 33).

"The *ger* that dwelleth with you in your land ye shall not vex. He shall be to you as an *ezrah* (native). Thou shalt love him as thyself; for ye were *gerim* in the land of Egypt" (Lev. 19, 33. 34; Deut. 10, 19).

"Thou shalt not oppress a poor and needy hired servant (*sakir*), whether he be of thy brethren or of the *gerim* in thy land in thy cities. Pay him his wage before sundown" (Deut. 24, 14. 15).

The *ger* was entitled to the equal benefit of the law.

"Ye shall have the same *mishpat* for *ger* as for *ezrah*" (Exod. 12, 49; Lev. 24, 22; Num. 9, 14).

"Hear between your brethren and judge righteously between a man and his fellow-Israelite or *ger*" (Deut. 1, 16).

"Pervert not the judgment of the *ger* or of the *yatom*" (Deut. 24, 17).

The *ger* who has killed a man unwittingly is entitled to the benefit of the city of refuge.

"The cities of refuge are for the B'né-Israel and for the *ger we-toshab* among them" (Numb. 35, 15; Josh. 20, 9).

And though in one respect the *ger* was the inferior of the Hebrew, in that the latter was not to be held as a bond-slave, while the *ger we-toshab* might be (Lev. 25, 45), yet the latter had opportunities for social advancement. Some of them had actually bought impoverished Israelites as bond-slaves, and were legally entitled to hold them, unless redeemed for full value (Lev. 25, 47-49).

That the policy of incorporating the natives of the land into the body of the new state met with opposition and was adopted with reluctance is highly probable.

Entering the trans-Jordanic country with peaceful intention, Moses found none but enemies. Edom repelled him, while Sihon and Og insisted on battle to the death. Moab's pretended amity covered undying hatred and the fraternization at Shittim caused the leaders of the people to become traitors to JHVH's cause (Numb. 25, 1-5) and threatened the disruption of Israel.

Small wonder, then, that the policy of extinction should find sturdy advocates. The foundation stone of the new republic, the worship of JHVH, had, in the friendly intimacy of Israel with the natives, been forgotten and Baal-Peor seemed triumphant. Stern measures of repression were necessary and were executed by the militant priest Phineas, with the provost-marshals (*shophetim*) (Num. 25, 5-9).

If the principle of the new state were to be firmly established, a Pontiff was necessary to guard the national

religion. Phineas was chosen for the office (Num. 25, 11-13), the Levite with an eye single for the cause, "who did not acknowledge his brethren or know his own children," if they were unfaithful to it (Deut. 33, 9).

When Joshua from the east bank of Jordan looked on Jericho, the whole stupendous problem must have weighed him down. There was much in favor of extreme measures and much against them. Even in the city he was about to attack he had found friends among the natives, and doubtless there were such everywhere.

They might be won to the side of JHVH. The spies returned had but just brought him Rahab's words: "JHVH, your God, is God in heaven above and in earth beneath."

In the end Joshua decided in favor of the milder course. He must have believed that the JHVH religion would, under the guidance of its sturdy priest, make its way and hold its own. At all events, after the bloody days of Jericho and Ai, he made a treaty with Gibeon, the great city (Josh. 9, 15; 10, 2), and the new policy was, for weal or for woe, initiated. History records that the Gibeonites became servants in the Temple and for the altar (Josh. 9, 27), and thus this first treaty was an auspicious beginning of the peace policy, a bloodless victory for JHVH, which might well inspire hope for the future.

While Joshua was thus reorganizing his city-states, he took care to provide that the national idea should be worthily represented. The *ohel-mo'ed*, the tent-temple of Israel, was instantly set up at Shiloh (Josh. 18, 1; Jer. 7, 12); there the tribes were gathered to attest their allegiance to the cause of JHVH; there abode the national priest. From thence and succeeding ecclesiastical capitals radiated the influences which were gradually to bring the city-states

into harmony with the Hebrew ideals of religion and government and were finally to transform the federation of small states into one unified kingdom for the north and another unified kingdom for the south.

These city-states (called for short, cities) each included at least one city, several towns and villages, together with fields, which were owned by the residents of the city and its dependencies. Under the policy adopted, these were not all Israelites, but a certain residue of the natives remained in their old homes.

These city-states all existed before the Hebrews arrived. Each had its king and his ministers, who ruled the little kingdom. The Hebrews at once abolished the kingly office and placed the government in the hands of a council, substantially representative in character. They did more. They established a national priesthood at Shiloh, whose office was to bring the law of the constituent city-states, or city-districts, into harmony with each other and with the national and religious customs and ideals of the Hebrew people. The difficulties in the way were enormous. A landless people were to learn that the military government of a camp was quite unadapted to the rule of the country they had conquered. They had to realize that local governments were necessary; that each of these had a center or quasi-capital, and that from these quasi-capitals (the fortified cities) would radiate opinions which had to be reckoned with. How well they learned the lesson the literature shows, since it indicates that the people's conception of the state was that it was an aggregation of cities; and that the word "cities of the land" became a mere term for the land itself.

Jephthah was buried in his native state of Gilead (precisely where we do not know), but the historian in stating this fact, simply says: Jephthah was buried in the "cities" (state) of Gilead (Judges 12, 7).

In the great civil war with the B'né-Benjamin the latter hastened to the *rendezvous* from the "cities" (Judges 20, 14); and when peace was restored they returned to their cities (Judges 21, 23). To hail the triumphant David the women came from all the "cities" of Israel (I Sam. 18, 6), and when Asa of Judah formed alliance with Benhadad of Damascus, the latter attacked the "cities" of Israel (I Kings 15, 20).

When David was arranging to be anointed King of Judah, he and his retinue settled in the Hebron "cities."

At the secession of Northern Israel under Jeroboam, the *B'né-Israel* that dwelt in the "cities" of Judah remained faithful to Rehoboam (I Kings 12, 17).

When in 722 B. C. Sargon overcame Israel, he settled foreigners in Samaria and they dwelt in its "cities" (II Kings 17, 24, 26).

When Josiah introduced his reforms, he put down the high places in the "cities" of Judah (II Kings 23, 5) and in the "cities" of Samaria (II Kings 23, 19).

Isaiah in his fortieth chapter addresses the nation as "cities" of Judah (Isai. 40, 9) and does the like in 44, 26.

Jeremiah does the same uniformly. "Publish against Jerusalem, that watchers come from a far country and give out their voice against the "cities" of Judah" (Jer. 4, 16).

"I shall cause to cease from the "cities" of Judah and from the streets of Jerusalem, the voice of mirth . . . , and the land shall be desolate" (Jer. 7, 34; 33, 10).



"I will make Jerusalem heaps . . . . and the "cities" of Judah desolate" (Jer. 9, 10 (11); 34, 22).

"The noise of the bruit is come . . . . to make the "cities" of Judah desolate" (Jer. 10, 22).

"Seest thou not what they do in the "cities" of Judah and in the streets of Jerusalem?" (Jer. 7, 17).

JHVH said unto me, Proclaim all these words in the "cities" of Judah and in the streets of Jerusalem" (Jer. 11, 6).

"Then shall the "cities" of Judah and inhabitants of Jerusalem go and cry unto the gods unto whom they offer incense" (Jer. 11, 12).

"JHVH, the God of Israel, saith unto me: Take the wine cup of this fury at my hand, and cause all the nations (*goyim*) to whom I send thee to drink it:

"Jerusalem and the "cities" of Judah and the kings thereof and the *sarim* thereof . . . ." (Jer. 25, 15, 18).

"Thus saith JHVH: Stand in the court of JHVH's house and speak to all the "cities" of Judah which come to worship in JHVH's house . . . ." (Jer. 26, 2).

"In the fifth year of Jehoiakim, the son of Josiah, king of Judah, in the ninth month, they proclaimed a *šom* (convocation, fast ?) before JHVH to all the people in Jerusalem, and to all the people that came from the "cities" of Judah to Jerusalem" (Jer. 36, 9).

"Go back also to Gedaliah, the son of Ahikam, the son of Shaphan, whom the king of Babylon hath made governor in the "cities" of Judah . . . ." (Jer. 40, 5).

Thus saith JHVH of hosts, the God of Israel: Ye have seen all the evil that I have brought upon Jerusalem and upon all the "cities" of Judah . . . ." (Jer. 44, 2).

"My fury and mine anger was poured forth and was kindled in the "cities" of Judah and in the streets of Jerusalem . . . . " (Jer. 44, 6. 17).

Ezekiel speaks of the land of Israel in the same fashion:

"The inhabitants of the "cities" of Israel shall go forth . . . . " (Ezek. 39, 9).

Zechariah characterizes the southern kingdom similarly:

"How long wilt thou withhold mercy on Jerusalem and from the "cities" of Judah . . . . " (Zech. 1, 12).

From the very beginning of the conquest this notion that the state is only a bundle of "cities" (city-districts) had taken root.

In reading the book of Joshua, one is struck with the fact that the number of cities awarded to the several tribes is so large that the territory represented by them and their dependencies practically covers the settled part of the country and is sufficient to contain the whole population. Reuben is credited with thirteen cities, whose names are given, and with a group without names but described as "all the cities of the plain" (Josh. 13, 17-21).

Gad has four cities named, plus "all the cities of Gilead" (Josh. 13, 30. 31).

Judah has one hundred and twelve cities and their villages (Josh. 15, 21-62).

Benjamin has twenty-six (Josh. 18, 12-28).

Zebulun twelve (Josh. 19, 15).

Issachar sixteen (Josh. 19, 22).

Asher twenty-two (Josh. 19, 30).

Naphtali nineteen (Josh. 19, 38).

Dan eighteen (Josh. 19, 41-47).

The number awarded to Western Manasseh and to Ephraim is not stated, but even without them and without the groups whose numbers are not given, there are more than three hundred cities, each having its dependencies and its outliers. "These cities were fenced with high walls, gates and bars" (Deut. 3, 5; 1, 28).

In time the idea of the state as "cities" was expressed even more significantly by the word *sha'ar*, which from meaning the gate of a fortified city, came to signify the court which was held at the gate, then the city itself, and finally all the dwelling places of the people everywhere (Exod. 20, 10; Deut. 5, 14; 6, 9; 11, 20; 12, 15. 17. 18; 14, 27; 15, 7; 16, 5. 11; 31, 12). Indeed, so extended had become the idea attached to the word that it was applied even to an encampment composed only of tents (Exod. 32, 26. 27).

The existence of these pre-Israelite city-states, and their persistence under the Hebrews as city-districts being assumed, it becomes important to ascertain what were their powers, their practical jurisdiction, before the conquest and after the conquest.

From pre-Hebraic times we have two examples, Shechem and Gibeon. Shechem lies in the valley between Ebal and Gerizim. It is to-day the sacred city of the Samaritan sectaries, the seat of the government of the province, and the connecting-link of the telegraphic systems of the east and west of Jordan. Its history extends back into remote antiquity. Abraham and Jacob visited it, and all Israel chose it for the inaugural service on taking possession of the Promised Land.

Gibeon, too, has its story. It was the first of the Palestinian cities to see that the country was doomed to

succumb to its Hebrew invaders. It possessed an early Hebrew temple (*bet-elohim*), in which adherents of the native religion agreed to serve JHVH; and it gave the final touch to the tragedy of Saul's career by its insistence on the law of blood-guilt for Nob's murdered priests, which culminated in the gruesome tenderness of Rizpah (II Sam. 21, 1-11).

Shechem, the Hivite, the son of the *nasi* of the city-state of Shechem, loved Jacob's daughter Dinah and began to treat with her people, the B'né Jacob, in order to arrange a marriage. The narrative indicates that up to that time there was no right of *connubium* between the two contracting powers. Such a right, general to both parties, was now proposed by Hamor, the *nasi* of the Hivites, coupled with the privilege of settling the country, dwelling and trading therein, acquiring lands and ultimately becoming one with the natives. The B'né Jacob insisted on certain indispensable terms, to which the *nasi* and his son were willing to agree. At this point it is seen that the *nasi* and his son had not the power to bind their people without obtaining the consent of the council.

Hamor and Shechem duly proposed the treaty at "the gate of their city," to the council there met, the *anshe ha-'ir*. The latter accepted the terms and the part to be performed by the Shechemites was duly carried out. The treaty, however, failed on account of the vengeful wrath of Simeon and Levi (Gen. 34, 8-27).

The second example of inter-national action by one of the pre-Hebraic city-states is the case of Gibeon. In Joshua's plan of campaign this place was marked out for early attack. Its capture would have had an enormous effect in depressing the spirit of the natives. It was the

capital city of an exceptionally important district, which included three other cities, besides the towns, villages, and fields dependent on and appurtenant to each of them. The king of the district had his royal court there; it was an *'ir-melukah*. Its magnates showed their vigilance and ability. When they saw that the resistance of Jericho and Ai were merely futile and that Joshua had relentlessly punished those unfortunates, they determined that peace at any price was the wise policy.

The report (Josh. 9, 3-27) tells, in excellent narrative fashion, how the emissaries of the *zekanim* of Gibeon disguised themselves so as to appear to have come from a far country, how they entered Joshua's camp at Gilgal, how they declared that they had heard of the wonderful exodus from Egypt and of the great victories of Israel over Sihon and Og in Eastern Palestine (carefully concealing their knowledge of Joshua's late victories), and how their magnates (*zekanim* and *yoshevim*) (not a word about their *melek*) had urged that an alliance with the Hebrews was a desirable and necessary thing.

Captivated by these flattering tales, Joshua and his councillors omitted to consult the oracle, allowed themselves to be tricked into a treaty of alliance, and ratified it by the oaths of the *nesi'im* of the *'edah* (the twelve princes of the Privy Council of Israel).

A few days later the truth leaked out. The worn-out and weary wanderers lived close by,—in the cities of Gibeon and its dependencies, Kephirah, Beeroth, and Kiriath-jearim. The conquering host was naturally indignant at the deceit. The general assembly of Israel (*kol ha-'edah*) murmured at the lenity of the terms accorded, but the *nesi'im* had ratified the treaty, had given their word. Per-

sonal and national honor required that it should be faithfully carried out.

The incident of Gibeon left an abiding impression on the mind of the Hebrew people. The old narrative (Josh. 9, 23-27) records that Joshua, while adhering strictly to the terms of the treaty, found a means of punishing the Gibeonite magnates who had tricked him into it. He sentenced them to become hewers of wood and drawers of water for the *bet-elohim*. They were glad that things were no worse, and the story ends by telling that they at once took up their work which they continue to perform "even unto this day."

The city, however, retained its importance in the subsequent history of Israel. It is probable that Nob, where David, fleeing from Saul, was succored, was either one of the cities of the city-state of Gibeon, or perhaps was the name of the priests' quarter of the city itself (I Sam. 21, 1-9), just as the quarter of Jerusalem in which Huldah lived was called by its own name, the *Mishneh* (II Kings 22, 14; Zeph. 1, 10). The dreadful cruelty of Saul in slaughtering the priests for their innocent aid to David (I Sam. 22, 9-23) was long remembered. Indeed, it is recorded that in David's reign JHVH visited Israel with a famine, because this blood-guilt had been in no wise atoned for, and that in order to regain Divine favor, the Gibeonites were besought to accept compensation or wergild (*kopher*) for their murdered kinsmen, that they disdainfully spurned this offer, but finally consented to accept the death of seven sons of Saul in satisfaction of the whole blood-guilt (II Sam. 21, 1-10).

In the time of Solomon it was the great *bamah* (high place) whither Solomon went to make a great sacrificial feast and where he had the dream in which, asked by JHVH

what he wanted, he prayed for wisdom to do justice (I Kings 3, 4-15).

The story was finally amplified and embellished. The sacrosanct *ohel mo'ed* which Moses had made in the wilderness was supposed to have been set up at Gibeon (I Chron. 16, 39). Of course the legend was mere poetry. History establishes that the *ohel mo'ed* was at Shiloh (Josh. 18, 1. 8; 19, 51; 22, 12; Judges 21, 19).

These two instances in which city-states exercised the highest national functions, namely dealing with foreign powers, are both pre-Israelite. The absence of such examples in Hebrew times is persuasive evidence of the firmness with which the national idea had taken root. A remarkable feature in both cases is that the dominant power is ascribed to the council. The king or chief in the one case can do nothing by himself; in the other case he is not even mentioned. That this accurately represents pre-Israelite conditions is highly improbable. The abundance of kinglets to which we have before alluded, speaks loudly against it. Moreover, there is a hint in the story of Abimelech with relation to this same city-state of Shechem, which gives weight to the theory that the king had great power. Gideon, the chief of the clan of Abiezer, and the great man of Manasseh, died leaving seventy sons by his wives, and one son (Abimelech) by a Shechemite concubine. In the natural order of events a legitimate son would have succeeded to the chieftainship, under whose sway stood, among others, the ancient city-state of Shechem. That its great families should recall with regret the good old times before the Hebrew conquest, when the city-state of Shechem was an independent sovereignty, of which the city was the capital, was but natural. Now they owed allegiance

to the overlord, Manasseh's chief, whose capital was at Ophrah.

With the instincts of an able demagogue, Abimelech intrigued to fan the flame of Shechemite discontent by comparing the present tributary condition with the former independence. His chief assault was directed against the leading feature of Hebrew polity, the great council of seventy. He made it clear to the municipal council (*anshe Shechem*, *ba'ale Shechem*) that any of the legitimate heirs of Gideon would be faithful to this institution, and his spokesman summed up the argument in his favor by the question: Do you prefer to be ruled over by seventy or by one? It turned the tide; Shechem revolted, and its magnates enthroned Abimelech as king (Judges 9, 1-6).

One cannot read this story without suspecting that the accounts of pre-Israelite councils at Shechem and at Gibeon are deficient in not attributing to the kings of those states the power which was theirs under the ancient Constitutions. Nor is the omission to be wondered at. When the accounts were written, these numerous independent little kings had long disappeared and been forgotten. We know, too, that the knowledge of the early writers concerning the remote past was defective. You will recall the fact that at least one of the ancient scribes naively believed that before the institution of the Kingdom there was no law at all. To use his own quaintly simple words: "In those days there was no king in Israel; every man did that which was right in his own eyes" (Judges 17, 6; 21, 25).

Before leaving this subject of international dealings by pre-Israelite city-states, it may, for the sake of completeness, be well to allude to the negotiations between the B'né-Heth and Abraham. It is true that the narrative appears to



concern a larger nation than is included in a city-state, and that the council is not called *zeḱenim* nor *be'alim*, nor *anshe ha-'ir*, nor *ziḱne ha-'ir*, but has the larger title of *'am ha-areṣ*, which designates a national council. On the other hand, we know that the great Hittite empire was in the north, and that the section of it with which Abraham dealt must have been relatively small. Hebron was the capital, and in connection with this place there survives in the records one reminiscent note which seems to place it on a parity with Gibeon, which, as we have seen, was a larger city-state than ordinary, was, in fact, a league of cities.

When David believed that his time had come to obtain the chieftainship of Judah, he consulted the oracle, was affirmed in his belief and was directed to go to Hebron. He, together with all his train, went up and dwelt in the "cities" of Hebron (II Sam. 2, 1-3). This passage would seem to indicate that Hebron had been for long the capital of a larger city-state, composed of a league of cities with their appurtenant towns, villages, and fields.

When Sarah died at Hebron, Abraham desired to obtain a burying-place of his own. It would seem, that according to the customary law, an alien (*ger we-toshab*) could not acquire an indefeasible permanent estate in land. He therefore applied to the council for the grant of an exceptional privilege, enabling him to accomplish his purpose. He was recognized as an important power: "Thou art a *nesi elohim* (a prince of God) in our midst." Every one was willing to tender a burial-place for Sarah's body. But this was not what Abraham wished. He wanted a permanent estate (*aḥuzzah*) and this the council finally accorded to him.

The proceedings were in public session of the council, were presided over by Ephron, and were highly polite and ceremonious. Abraham urged his request, the President answered, the matter was agreed on, and the treaty was solemnly consummated in the presence of the whole council (Gen. 23, 3-20).

Whether this Hittite example relates to one of these district-states, may remain doubtful, but the other instances that have been given are sufficient to show the sovereign character of these city-states, and to point out what radical changes were necessary, if they were ever to constitute a national federal republic.

An early example of the process is given us in the case of the city-state of Ophrah. It had fallen to the share of Manasseh, and the ruling clan of that tribe, Abiezer, was seated there. The chief was Joash, the head of the clan. From time immemorial the little state had had its Baal-altar with the *Asherah* pertaining to it. Word came through a *nabi* or *mal'ak* יהוה, that the worship of יהוה must now be substituted. To that end it was necessary to cast down the Baal altar, cut down the *Asherah*, and build an altar to יהוה on the height called *Rosh ha-ma'oz*.

The chieftain Joash had carried out the policy of conciliation all too well. Baal still reigned supreme in Ophrah and Joash lacked either the will or the force to strengthen the cause of the Hebrew nation and its religion.

The task of making good his delinquencies was imposed on his son Gideon. When the message came he received it with the usual profession of modesty which Hebrew writers attribute to those born to greatness: "My *eleph* (clan) is lowly in Manasseh and I am the pigmy in my *bet-ab*," just as Saul, when apprised of his selection as

King of Israel, protested: "Am not I a Benjamite, of the smallest of Israel's tribes? and is not my clan (*mish-pahah*) the puniest of all the clans of that tribe?" (I Sam. 9, 21). To Moses in the early age (Exod. 3, 11; 4, 10), and to Jeremiah in the later times (Jer. 1, 6), similar modest declaimers are credited. Gideon's scruples were, however, overcome, and he accepted the perilous post. Knowing that he would place himself in opposition to the authorities, whose chief was his own father, he determined to initiate the revolution at night. With the help of ten trusty men, he cast down the Baal altar, cut down the *Asherah*, and burned the wood thereof in offering an *'olah* upon the JHVH altar which he built.

In the morning the city was in commotion. The *anshe ha-'ir* promptly viewed the situation, and the question ran: Who is guilty? Doubtless the oracle was in some form consulted (*wayebakeshu*) and the judgment was pronounced (*wayomru*): Gideon ben Joash has done this deed.

The *anshe ha-'ir* demanded of Joash that he surrender his son for execution.

This was in strict conformity with the law of the ancient city-state, which gave its authorities the power to vindicate the religion of the state. This old law survives in the records in Deut. 21, 18-21. It is the law commonly called that of the stubborn and rebellious son, which provides that the delinquent's parents shall bring him to the *zikne ha-'ir* at the gate (v. 19), and that the latter (*anshe ha-'ir*, v. 21) shall stone him. The details of the examination of this interesting and little-understood law are reserved for further consideration, when we come to review

the remnants of the *zikne ha-'ir* code still preserved in the Pentateuch.

In Gideon's case there was an additional reason for this demand upon his father Joash. The latter was not a mere member of the council, but its chief. In no other way can certain expressions of the text be properly construed. It is Joash who is custodian of Baal's altar; it is from his cattle that the JHVH sacrifice is culled; it is his opposition to the JHVH altar that is feared, and it is in subordination to him that the other members of the *anshe ha-'ir* stand (act or serve) (*'amdu 'alaw*), just as *ha-'am* stood in the court of Moses (*waya'amod ha-'am 'al Mosheh*) (Exod. 18, 13), as Eglon's court councillors stood with him (*kol ha-'omdim 'alaw*) (Judges 3, 19), and as the angels in the court of Heaven stood to JHVH's right and left (*'omed 'alaw*) (I Kings 22, 19).

Joash met his fellow councillors with a flat denunciation of their action. This, he said, is a contest between gods. Baal has been worsted. He could not save himself, will your aid save him? Beware, the mighty power that overthrew Baal will punish your puny efforts with instant death, and will save my son from any harm that Baal can do.

The council acquiesced and Gideon became the chief with the epithet of *Jerub-baal* attached to his name, in memory of his victory over the deposed god (Judges 6, 8. 11. 24-32).

We see here the nation in the making. It adopts the city-state without its king, but gives the power to the council, which in this instance assumes to act as the highest ecclesiastical authority, doubtless in strict accord with pre-Israelite practice. Every autonomous district had its own

king and its own god, and the sovereign authority was not differentiated into military and civil jurisdiction, nor subdivided into legislative, executive, and judicial function. The genius of the people was local and its outlook narrow. There were then, as now, ambitious souls dreaming of world-conquest, but they lived in Egypt and by the Euphrates and not in Palestine. The entrance of the Hebrews into the country brought a rush of new ideas, political and religious. Palestine was to become one great state with one only God. Local sovereignties and religions were to be extirpated, or at least fused with institutions embodying these loftier conceptions.

We have seen in the case of Gideon how this national spirit made its way in one quarter. There is no reason to doubt that the movement throughout the whole country was conducted on similar lines. The presence and vigor of a national supervising body being granted, all the rest naturally follows.

Indeed, it is Gideon himself who energetically promotes the further progress of nationalization.

As this phase of his career brings out clearly the functions of the *ziḡne ha-'ir* of two cities east of Jordan in Hebrew times, further description thereof may conveniently be reserved for the next lecture.

### III

Gideon, the champion of JHVH, was the chief man in Manasseh. He had attained a recognized position by his brave advocacy of Hebrew nationalism against the conservative pagan party, but the success of the cause was as yet doubtful.

An event occurred which put the matter to the proof.

The Bedouins overran the country, and if anything was to be saved from these mauraunders prompt action was imperatively needed. Gideon aroused his Abiezer clan. With three hundred picked men, shouting their way-cry, "The sword of JHVH and of Gideon," he attacked and routed the invaders, drove the survivors across Jordan, and hotly pursued them. When he reached the city of Succoth, in Gilead, his supplies failed. He applied to the council (*anshe Succoth*) for bread for his soldiers, as he was pursuing the Bedouin kings and hoped to capture them. The *sare Succoth*, however, reckoned that he might fail, and in that case they would have to suffer the vengeance of the Bedouins. Their reply, indicating the probability of such an event, irritated the fiery chieftain. He retorted with the ominous parting message: When JHVH hath delivered Zebah and Zalmuna into my hand, I will treat your flesh with *midbar*-thorns and with briers. Abating nothing of the pursuit, he reached the city of Penuel and there made his application for relief. The *anshe Penuel*, timid like those of Succoth, gave him a flat refusal. The infuriated Gideon threatened to revisit them after he should have triumphed, and to break down their tower (*migdal*).

Gideon overtook the fleeing enemy, won a complete victory, overthrew the retreating army, and captured its kings.

On his return march he punished the cities which had treated him so coldly and unpatriotically. Having picked up a man in the neighborhood of the city of Succoth, he ascertained, by questioning, that his prisoner was a clerk (*na'ar*) of the city council (*anshe Succoth*). Whereupon, he compelled him to write a roll or list of the *sarim* and

*zeḱenim* of Succoth. There were seventy-seven in all (perhaps seventy *zeḱenim* and seven *sarim*).

Thus prepared, he entered the city in triumph, carrying with him the captive kings. Then he compelled the council to meet and addressed them thus: Here are the kings whom you thought I could not capture. You are entitled to the promised reward!

Whereupon he took the *zikne ha-'ir* and thrashed them soundly with *midbar*-thorns and with briers.

Penuel fared even worse. He broke down its tower and slew the members of its council (*anshe ha-'ir*) (Judges 7, 7. 22; 8, 4-17).

These two incidents give us a vivid picture of the times. Succoth and Penuel, two cities of eastern Palestine, are governed by *zeḱenim* and their officials (*sarim*). They regard alone the interests of their narrow communities. The harrying of Manasseh and other districts west of Jordan does not disturb them. If the Bedouins confine their marauding to western districts, they will remain neutral. The national consciousness has not affected them. In Gideon, however, they met the man who could give impressive lessons.

Of all the chieftains called Judges (*shophetim*), Gideon appears to have been the most forceful, and to have given the earliest and greatest impulsion to the unification and nationalization of Israel. Besides his actions already described, the records aver that he succeeded in getting partisans out of Naphtali, Asher, and Ephraim to act with Manasseh in war (Judges 7, 23. 24), and the fact that his battle-cry survived, indicates how deep an impression of him was stamped on the popular mind.

It is plainly erroneous to see in these military leaders the peaceful magistrates known by the same name in later times. The experience of Israel was the same as that of all other peoples whose rise depended on the success of their arms. The great soldiers wielded the whole power of the state, and when more peaceful times came and the balance of power swung to the civil side, the names of the offices which had become important in the eyes of the people, were transferred to purely civil offices, with radically different functions. Thus it is that the *melek*, *shophet*, *dayan*, *mehokek*, and *sopher*, who, were, of old, military officers, came to designate officials whose duties were mainly civil. *Ha'am*, which was anciently the army (that is, all males between the ages of twenty and fifty) became the whole body of the people. And of the process the word *shophetim* is perhaps the most striking instance. In Numbers (ch. 25) we have the record of Israel's unwholesome affiliation with Moab. Drastic measures had to be resorted to, in order to cure the mischief. Moses was expressly enjoined by JHVH, to take all the chieftains (*rashe ha'am*) and hang them, whereupon he ordered the *shophetim* to slay each one such of his men as had accepted Baal Peor. This was an order merely military to the Provost-marshals of the army, whose duty it was to execute the culprits (Numb. 25, 1-5). When the contest had progressed and the people were fighting for the land, conquering it and settling down on it piecemeal as they could, these *shophetim* as military chiefs had forced upon them questions relating to the civil government of the territory they commanded. Thus the name of their office was preserved, while its jurisdiction and functions were modified. Finally, at a much later stage, it came to designate civil judges charged with the



administration of justice according to law, and thus lost its military connotations.

The records of the *shophetim* book show the process from an early stage. From Othniel, the first of them, to Samson, the last, they were all (so far as we know anything about them) successful warriors; even Deborah is not excepted, since she stirred up the great war against Sisera and took a personal part in it. It is only with Eli and Samuel that the atmosphere changes. The former, when we first encounter him, is a priest, grown old in the service of the Shiloh temple, while the latter begins as his acolyte. War, instead of being the normal condition, has degenerated into an incident, not unusual it is true, but also not abnormally frequent. The ecclesiastical jurisdiction has become firmly fixed, and men are questioning and criticizing its administration by particular officials as a corrupt departure from ancient custom (I Sam. 2, 13-17). All the symptoms indicate that the nation has been practically united, and that the national idea of God and the state have permeated everywhere. Elkanah went up out of his city yearly to worship and to sacrifice at Shiloh (I Sam. 1, 3), and we may freely accept him as a type. Substantial farmers from all sections of the country did the same (I Sam. 2, 14). "And all Israel from Dan even to Beersheba knew that Samuel was established to be a prophet of JHVH" (I Sam. 3, 20).

While it is true that we cannot trace the progress of nationalization before Eli, we may be sure that Gideon's part in it was not small. The tradition survived that a national assembly of Israel (*kol ish Israel*) offered him the royal crown, with the right of succession in his descendants (Judges 8, 22), and that he made his home-city Ophrah the virtual or actual capital of Israel (Judges 8, 27).

There is another chief, Jephthah, who is said to have been *shophet* of Israel (Judges 12, 7). Of his activity outside of his own Gilead, we know little or nothing. His story merely emphasizes the separateness of the trans-Jordanic Hebrews, which incensed Gideon and which was pithily depicted in the song of Deborah: "Reuben abode among his sheepfolds. Gilead abode beyond Jordan" (Judges 5, 16. 17). The blame for this condition must not attach to the Eastern Hebrew alone. When Gilead was threatened, it applied for help to Ephraim in vain (Judges 12, 2), and so bitter was the feeling that it led to war between Ephraim and Gilead (Judges 12, 4-6).

Jephthah's career is interesting, however, for our point of view. He is the *rosh* and *kašin* of the "cities" of Gilead, and he became so by the independent action of that league of cities. The narrative is full and complete.

The *B'né-Ammon*, a non-Hebrew people dwelling in Eastern Palestine, suddenly put an army in motion against Gilead. The case was desperate and the *zeķenim* of Gilead bethought themselves of Jephthah as a desirable leader. He, a native of the land, the son of a princely father, had been exiled at the instance of his brethren, who claimed the superior rights of legitimacy. He had taken up his abode in the land of Tob, whither traveled a delegation of the *zeķenim* of Gilead to fetch him home. They said to him: Come home and we will make you the head of the army. He made difficulties, reminded them of their former hostility. They increased their offer, would make him first of all the lords of the land (*rosh lekol yoshbe Gilead*). He demanded an oath that they would not forget the promise after the victory. They took it by the solemn formula: JHVH be the witness (*shome'a*) between us! Whereupon

he accompanied them and was made *rosh* and *kašin*, the duties of which offices he formally assumed *liphne* JHVH at Mizpeh.

We have here an instance in Hebrew times of a city-state exercising, apparently without limitation or restraint, as complete powers of sovereignty as it would have enjoyed in pre-Israelite days. It is threatened by a foreign power, which "made war against Israel," as the record has it (Judges 11, 4). No part of Israel, however, seems to act except the *zekenim* of Gilead, who send to fetch Jephthah home from his exile, and promise to make him their chief (*rosh*). He enters into a solemn bargain with them *liphne* JHVH, and, in consequence, assumes command in the manner of a king owing allegiance to nobody. He applies for aid to Ephraim as a friendly though foreign power, is refused on the ground that he does not acknowledge allegiance to it, the claim being made that the Gileadites were Ephraimite fugitives (Judges 12, 4). He resents the claim, wages war against Ephraim, and demonstrates the latter's foreignness by showing that no Ephraimite could pronounce a *shin* as a true Gileadite would (Judges 12, 6).

In short, we have here a picture of a pre-Israelite city-state with its king; the only difference being that the king has another title and that JHVH is acknowledged as God.

These concessions to national feeling must, however, not be overrated. They show that the federal unity, though not established, had made a start. Even then the influence of Shiloh must have been at work. Indeed, the old tradition ran that it was from Shiloh that Gilead had started to take possession of its country (Josh. 22, 9), and when all

Israel declared war against Benjamin, Gilead sent its contingent (Judges 20, 1), only one of its cities holding aloof.

There is another and later example of the exercise of sovereign power by one of the cities east of Jordan. That city was Jabesh-Gilead (Judges 21, 9). When the Federal council declared war against Benjamin, it was the city that refused to send its quota to the army, though the other cities of Gilead did so. The result of the war was the almost complete ruin of Benjamin; only six hundred of its young braves survived (Judges 20, 47). The Federal council, dismayed at the extinction of a tribe, cast about for a method of rehabilitating it. They had all sworn not to give their daughters to Benjamites. The only resource was to find women of Israel whose fathers had kept aloof from the Federal army and from the oath. On roll-call it was found that there was no one present from Jabesh-Gilead. The disaffected city was summarily convicted of high treason to the Federal cause and the total destruction of its inhabitants other than young virgins was decreed. An expedition was immediately fitted out, the city was taken, and its inhabitants were killed, save four hundred young virgins who were given to Benjamites for wives.

Another narrative (found in Samuel) gives a clue to the true meaning of this incident. The tradition evidently ran in Israel that Jabesh had maintained a relation of alliance with the Ammonites and that this caused its refusal to join the body of Israel.

After the war of the tribes against it, the revived city of Jabesh was incorporated into the Federal Union. So only does the narrative in I Samuel 11 become intelligible. It is there related that Nahash (the king of the Ammonites) encamped against Jabesh-Gilead, evidently because it had

fallen off, and that the *anshe Jabesh* promptly offered to renew their allegiance. This he arrogantly refused, unless they would submit to have their right eyes thrust out as a reproach and defiance to united Israel. The vindictive nature of this demand must be ascribed to the transfer by the same city council of the city's allegiance from Ammon to Israel, for which desertion signal punishment was necessary. The *zikne Jabesh* demanded a respite of seven days to communicate this defiance to Israel and to receive help from it. This Nahash magnanimously granted. The *zikne Jabesh* sent messengers to the council (*kol ha-'am*) of Gibeah, who broke into weeping at the tidings. When Saul, returned from his day's business in the field, learned the cause of the confusion, he promptly called for Federal troops to aid the distressed city, and bade the messengers return home with the assurance that help was at hand. The *anshe Jabesh* received the news with enthusiasm. In due time Saul arrived and defeated the Ammonites. His signal victory silenced all opposition as well to the Federal union as to his Kingship, and his enthronement in the Western kingdom was now affirmed and celebrated in the East-Jordanic territory at Gilgal, an event which greatly rejoiced Samuel and the Federal Council (*kol anshe Israel*) (I Sam. II, 1-15).

The value of the narrative is in its indication that the Jordan marked as well the political as the physical separateness of the East and West. When stubborn old Jabesh was at last convinced that a Federal union of all Israel was inevitable, the work was finished. Even then it did not accept the western king as the legal head of the state until he had been crowned in the East.

The examples of Succoth, of Penuel, of Gilead show that as regards political power the early Hebrew city-states that lay to the East of Jordan seem to have exercised it without restraint or control.

The instance of Ophrah shows that the same was true of the Western city-states' ecclesiastical power.

Even so late as the time of Samuel we find remnants of it in the West. When the Ark of JHVH was cast adrift by the Philistines and landed at Beth-Shemesh, the *anshe Bet-shemesh* assumed official control over it and offered 'olot and *zebahim* (I Sam. 6, 15), and when its presence brought calamity, the *anshe Bet-shemesh* sent messengers to Kiriath-jearim, to induce that city to take charge of the holy relic. The latter fetched it and sanctified (*kiddeshu*) a young man to guard it. And to the last, after the federal union had been established for ages, and the ecclesiastical power had become nationalized, the priest-cities retained the ecclesiastical powers of the old city-states. This we learn from the action of the Anathoth council against Jeremiah. Anathoth was a priest-city at least as early as the time of Solomon. When Abiathar fell from the latter's favor, he was ordered to go into retirement on his estate at Anathoth (I Kings 2, 26).

Jeremiah belonged to it by birth (Jer. 1, 1), being "of the *kohanim* that were in Anathoth." When he began to take his own course, the *anshe* Anathoth ordered him to desist, claiming the right to condemn and execute him if he disobeyed (Jer. 11, 21).

One other important survival of the old city-state sovereignty was the importance in the public life of the state of the capital cities of the two kingdoms. Jeremiah, than whom none was more familiar with political conditions,

addresses the state as "men (*ish*) of Judah and inhabitants (*yoshbe*) of Jerusalem" (Jer. 4, 4: 17, 25; 7, 17. 34; 8, 1, etc., etc.), always mentioning the capital city in a manner indicating that it possessed and exercised special powers.

A similar phenomenon is observable in the Northern Kingdom. When Jehu had killed Ahab and was about to destroy the scions of that house, root and branch, he mockingly dared the *sarim* and *zeḡenim* of Jezreel to enthrone one of Ahab's sons (II Kings 10, 1-3), a sorry jest, indicating, however, that the council of that city had special political powers not shared by the other cities of the kingdom.

So Jezebel, when she intrigued to put Naboth on trial for blasphemy and lèse-majesty, gave the directions to the *zeḡenim* and the *sarim* of Jezreel, fellow-councillors with Naboth (I Kings 21, 8), to convoke the high court of the nation, the *rosh ha-'am* (21, 12), in which they must have had a specially influential position.

That these city-councils exercised ordinary municipal functions was a matter of course. When distinguished strangers came to the city, the council received and entertained them.

Samuel, for instance, visited Bethlehem for an important purpose, which was not publicly known. The *ziḡne ha-'ir* cordially met and welcomed him (I Sam. 16, 4). It may be well to note here that the Authorized Version which makes the *zeḡenim* tremble at Samuel's coming is based on a misunderstanding of the word *wayeḡherdu*, which besides trembling means also being extremely hospitable. Thus Elisha, in acknowledging the anxious hospitality of the great lady of Shunem, calls it *ḡaradah* (II Kings 4, 13).

When King Josiah visited Bethel he was attended by the *anshe ha-'ir*, who promptly gave him the information he was seeking (II Kings 23, 17). And when the water supply of Jericho was defective, the *anshe ha-'ir* requested Elisha to improve its quality (II Kings 2, 19).

Besides their political, ecclesiastical, and municipal functions, the *zikhne ha-'ir* exercised general judicial powers. They tried murder cases, and if the murderer fled to a city of refuge, they could demand and obtain his extradition for the purpose of handing him over to the executioner (*go'el ha-dam*) (Deut. 19, 12). If the murderer could not be discovered they washed the city's hands of "innocent blood" by a ceremony and a sacrifice, and thus removed the blood-guilt which would otherwise have attached to the city. If the murderer of the victim, whose dead body was found in a field, could not be discovered, it was the duty of the *zikhne ha-'ir* to see to it that the blood-guilt should not be fastened on their own city, unless, by careful measurement, it should be ascertained that it was nearer than any other city to the place where the body lay (Deut. 21, 1-9).

The *zikhne ha-'ir* also had jurisdiction in certain delicate matrimonial questions involving not only amercements and other penalties, but extending also to capital punishment (Deut. 22, 13-21).

Indeed, it is probable that the twenty-first and twenty-second chapters of Deuteronomy were compiled from a code defining the powers of the *zikhne ha-'ir*, and that certain provisions contained in those chapters were part of such code, although the *zikhne ha-'ir* are not mentioned in con-



nection with them. Such is particularly the direction to build battlements for the roofs of houses (Deut. 22, 9). The distinction between a criminal act perpetrated within the city, and a similar act perpetrated in the field (Deut. 22, 23-27) may also be derived from that code.

The evidence seems sufficient to warrant the conclusion that these councils (the *anshe ha-'ir*, the *zikhne ha-'ir*) combined the full judicial power with their other functions, and that the administration of justice was not confided to a special class of experts learned in the law until a much later period. When this change came about is matter for future investigation. That it had to come is perfectly plain.

The country was composed of a large number of cantons, called "cities." The aim was to create a nation. A clash between the "cantonal" view and the "federal" view was inevitable. It resulted at first in the endeavor to bring the cantonal bodies to take national positions on questions coming before them by sending a federal expert or experts to advise them or to sit with them, and finally, in the establishment of the federal courts, which should in certain federal questions be supreme.

There are certain passages, obscure it is true, but nevertheless significant, which warrant these conclusions. We have already referred to the case of a murdered man being found in a field, and of the necessity of ascertaining which was the nearest city, since upon it the blood-guilt would be fastened. Finally the *zikhne ha-'ir* of those cities met each other for the purpose, and, it is safe to say, squabbles followed. Afterward we find that the *kohanim* (the *B'ne Levi*) join them, and the explanatory note following this statement gives as a reason for the apparent

intrusion that "JHVH thy God hath chosen them to minister unto him and to bless in the name of JHVH; and by their word shall every controversy (*rib*) and every assault (*nega'*) be tried" (Deut. 21, 5). That these *kohanim* (*B'né Levi*) were the delegates of the federal government can scarcely be doubted.

Concerning the establishment of a federal court and the removal thereto of an inter-cantonal question, we also have evidence. By the old *zikne ha-'ir* law, if a murderer fled the jurisdiction and was admitted to an asylum city by its *zikne ha-'ir*, the *zikne ha-'ir* of the city where the crime had been committed demanded his extradition for execution by the *go'el ha-dam* (Deut. 19, 12). As his admission to the asylum city was not granted until his application had been passed upon by the *zikne ha-'ir* of the asylum city (Josh. 20, 4), there was virtually a judgment in his favor that the murder was mere manslaughter. The demand for extradition necessarily attacked this judgment. The old law (Deut. 19, 12) nevertheless required his surrender. The inter-cantonal controversies thus arising were therefore removed to the federal court. The *zikne ha-'ir* of the asylum city were forbidden to surrender the fugitive on the demand of his home city (through the *go'el ha-dam*) (Josh. 20, 5) and the national court, the *'edah*, acquired jurisdiction. "The *'edah* shall judge between the slayer and the *go'el ha-dam*." If it affirmed the judgment of the *zikne ha-'ir* of the asylum city, it (the *'edah*) restored the defendant to it (Numb. 35, 24, 25; Josh. 20, 6).

There were, however, two classes of cases over which the old *zikne ha-'ir* had jurisdiction which in importance far overshadowed all others. In the contest to establish JHVH as the sole God of the nation, the most dangerous

crime was missionary apostasy, the misleading of men to revert to the old paganism. This crime was technically known as *sarah* or *dibber s-a-r-a-h*, and the federal authorities deemed its suppression vital to the existence of the commonwealth.

In the endeavor to establish a state of prosperous agriculturists among whom there should be no extreme poverty, the land-laws were of the first importance. That every family could have and retain its own farm and its own home was the ideal of the federal statesmen.

The jurisdiction of the cantonal tribunals was unfavorable to the achievement of either of these purposes.

We have already seen in the trial of Gideon for overthrowing the Baal altar, that the *zikne ha-'ir*, instead of striving to promote the cause of JHVH, stood by the old pre-Israelite cantonal god; that they looked upon Gideon, who had enlisted others in his cause, as guilty of *s-a-r-a-h*, the offence being committed not against JHVH, but against Baal. It was also intimated that the proceedings of the *zikne ha-'ir*, including their demand on Joash to produce Gideon for execution, were by virtue of an ancient *zikne ha-'ir* law which survives in the Pentateuch (Deut. 21, 18-21).

The wording is: "If a man have a *ben sorer u-moreh*, who will not obey the voice of his father, or the voice of his mother, and that, when they have chastened him, will not hearken unto them:

"Then shall his father and his mother lay hold on him, and bring him out unto the elders of his city and unto the gate of his place. And they shall say unto the elders of his city: This our son is *sorer u-moreh*, and he will not obey our voice; he is a glutton (*zolel*) and a drunkard

(*sobe*), and *kol anshe 'iro* shall stone him with stones that he die."

At first blush there would seem to be nothing in this law to justify the view that it is leveled against apostasy. A more careful examination, however, reveals certain facts which cannot be ignored. The first of them is that the law contains inconsistent definitions of the crime. The term *ben sorer u-moreh* itself was probably intelligible to everybody. Yet we have the following definitions:

1. Who will not obey the voice of his father or his mother.

2. The same with this qualification:

"After they have chastised him."

3. He is a glutton and a drunkard (*zolel we-sobe*).

Stripping it of these excrescences, we have the original form:

"If a man have a *ben sorer u-moreh*, his father and his mother shall lay hold on him and bring him out to the elders of his city and *kol anshe 'iro* shall stone him to death."

That the definitions are excrescences seems very plain. That a son should honor his parents is a mere commonplace. Indeed, by a very ancient Hebrew law, insulting parents was probably punished with death, "condemned to death (*arur*) shall be he who degrades (or insults) his father or his mother," (Deut. 27, 16). Certain it is that cursing them (Exod. 21, 17; Lev. 20, 9; Prov. 20, 20), or striking them (Exod. 21, 15) were both capital crimes. These provisions were amply sufficient to protect the parental dignity, and one may well be puzzled to determine why mere disobedi-

ence or eating too much, or drinking too much, should be made capital offences in a son not too old to be whipped by his father or his mother. Without the definitions, however, no one would translate *ben sorer u-moreh*, "stubborn and rebellious son."

The clue to the real meaning is to be found in this crime of *s-a-r-a-h* which we are considering. *Sorer* is one guilty of apostasy, and *moreh* means that he is aggressive in teaching his rebellion. There is no reason for translating *moreh* otherwise than according to its plain meaning of "teacher." Accordingly, a *sorer u-moreh* is an apostate who teaches apostasy.

The word "*sorer*" characterizes idolaters in many instances (Isai. 65, 2-7; Jer. 5, 23; Hos. 4, 15. 16; 9, 1-15) and in one passage Isaiah (30, 1) calls a company of men, rebels to true national policy, *banim sorerim*.

And so *moreh*. Isaiah denounces the misleading *nabi* as a *moreh sheker* (Isai. 9, 14). Habakkuk applies the same term to the man who trusts in his molten images for guidance (Hab. 2, 18. 19), and Proverbs declares that a man of Belial teaches wickedness (*moreh*) with his fingers (Prov. 6, 12. 13).

Indeed, the terms *sorer* and *moreh* naturally go together, because the *sorer* is one who seeks to convert others by argument. He speaks *sarah* (*dibber sarah*, Deut. 13, 6 (5)).

The *nabi* Hananiah is doomed to die within the year because he had spoken *sarah* (Jer. 28, 16), and the same expression is used of Shemaiah the Nehelamite (Jer. 29, 32).

As to gluttons and drunkards, no one dreams of their being liable to capital punishment. The proverbial philos-

ophy speaks of them much as we would in our day: The *sobe* and *zolel* come to poverty (Prov. 23, 20. 21); whoso consorts with *zolelim* shameth his father (Prov. 28, 7).

The meaning of the law thus ascertained makes clear its application to the case of Gideon at Ophrah. Gideon having been adjudged *sorer u-moreh*, it becomes his father's duty to deliver him to the *anshe ha-'ir* for execution. We need not rely on mere inference, however, for this conclusion. It happens that the offence of teaching *s-a-r-a-h* (*dibber s-a-r-a-h*) is fully treated of in a later statute, when the right to try it had been transferred to a Federal court (*kol ha-'am*), and this statute is express in demanding that a man must denounce not only his son, but his brother, his daughter, his wife, or his bosom friend, if they have committed this offence, and must also, as such denunciator, assist at the execution.

The words of this remarkable law are as follows:

"If there arise among you a *nabi* (prophet) or a dreamer of dreams, and giveth thee a sign or a wonder" (Deut. 13, 2 (1) ).

"And the sign or the wonder come to pass, whereof he spake unto thee, saying, Let us go after other gods, which thou hast not known, and let us serve them" (13, 3 (2) ).

"That *nabi* and dreamer of dreams shall be put to death because he hath spoken *sarah* (*dibber sarah*) against JHVH your God.... to thrust thee out of the way which JHVH thy God commanded thee to walk in ...." (13, 6 (5) ).

"If thy brother, the son of thy mother, or thy son, or thy daughter, or the wife of thy bosom, or thy friend,

which is as thine own soul, entice thee secretly, saying, Let us go and serve other gods, which thou hast not known, thou nor thy fathers" (13, 7 (6));

"Namely, of the gods of the people which are round about you, nigh unto thee, or far off from thee, from the one end of the earth even unto the other end of the earth" (13, 8 (7));

"Thou shalt not consent unto him, nor hearken unto him; neither shall thine eye pity him, neither shalt thou spare, neither shalt thou conceal him" (13, 9 (8)).

"Thou shalt inform upon him that he may be tried and executed; thine hand shall be first upon him at the execution and afterwards the hand of *kol ha-'am*" (13, 10 (9)).

"Thou shalt stone him that he die ...." (Deut. 13, 11 (10)).

And there is a fragment of even an older law of *s-a-r-a-h* which seems to have been enacted when the trial was still by oracle, and to have been amended from time to time as the jurisdiction was vested first in the *kohanim* and at a later period in the *shophetim*. In the trial by oracle, there was merely the evidence of the denunciator. This consisted in a solemn statement of the charge to the oracle-priest, through whom the oracle then communicated the judgment. As the crime of *s-a-r-a-h* was not complete unless the accused had spoken words of persuasion to others, the denunciator was called *shomea'* (hearer) (Lev. 24, 14) which, in later times designated the righteous witness in contrast with the perjurer (Pro. 21, 28). In other matters where the transaction was a visible one, the oracle-witness was called *ro'eh* (seer) (Exod. 22, 9 (10)) a word which finally came to mean *spy* (II Sam 15, 27).

When the system was changed and the *kohanim* tried the case without the oracle, the mere denunciator disappeared and in his stead the true witness ('*ed*') emerged. It would appear that originally, the requisite evidence against the defendant being given, the court had no option but to give judgment. In such a state of the law, where positive and direct evidence of a person who had heard or seen was alone admissible, the defendant's position was very perilous.

It was then enacted that in cases of *s-a-r-a-h* the defendant could halt the decision by impeaching the witness of perjury. The new supplemental issue thus framed was originally tried by the oracle (*liphne JHVH*). As this mode of trial had for the main issue been superseded, it could not have lasted long for the supplemental issue. Accordingly, we find the words *liphne JHVH* as the mode of trial supplemented by the words *liphne ha-kohanim*, which indicate that the priests themselves now tried the whole question. Afterwards, when the system of regular courts (*shophetim*) was introduced to replace the *kohanim* courts, the judges tried the whole question. If the witness was acquitted of the perjury, the defendant in *s-a-r-a-h* suffered death, but if he was convicted, the defendant was acquitted and the perjurer suffered the death by stoning which he had cruelly and wickedly designed to inflict on the innocent defendant.

This remarkable statute is as follows:

"If a false witness rise up against any man to accuse him of *sarah* (apostasy)" (Deut. 19, 16).

"Then both the men between whom the controversy (*rib*) is shall stand *liphne JHVH* (i. e. before the *kohanim*



and the *shopetim*) which shall be in those days)" (Deut. 19, 17).

"And the *shopetim* shall make diligent inquisition: and behold if the witness be a false witness and hath testified falsely against his brother (19, 18);

"Then shall ye do unto him, as he had thought to have done unto his brother . . . ." (19, 19).

"Thine eye shall not pity, life shall go for life, eye for eye, tooth for tooth, hand for hand, foot for foot" (19, 21).

The text of this law presents many difficulties, due, doubtless, to the fact that in it was incorporated an important later amendment, which provided that in certain cases the evidence of one witness should thereafter be insufficient (Deut. 19, 15), and to the further fact that the principle established by imposing the death penalty on false witnesses in *s-a-r-a-h* was afterwards expanded into a general principle affecting false witnesses in cases of murder and assault (Deut. 19, 21), in some of which the penalty was less severe. Nevertheless, a careful scrutiny of the text will show that the tribunal designated in its original form (i. e. the oracle) was changed first to *kohanim* and afterwards to *shopetim*, the notes of such change having in time been transferred from the margin to the text itself.

This subject of *s-a-r-a-h* ought not to be dismissed without at least mentioning a series of other legal provisions intended to carry into effect the general policy which produced the *s-a-r-a-h* law.

"He that sacrificeth unto any god, save unto JHVH only, shall be put to death" (*yahoram*) (Exod. 22, 19 (20)).

"Thou shalt say to the B'né-Israel, whoever he be of the *B'né-Israel* or of the *ger* that sojourn in Israel, that

giveth any of his seed to Moloch; he shall be put to death; the '*am ha-areš* shall stone him" (Lev. 20, 2).

"And if the '*am ha-areš* do anyways hide their eyes from the man, when he giveth of his seed to Moloch and put him not to death" (Lev. 20, 4).

"Then I shall set my face against that man and against his family and will cut him off and all that follow his practice to worship Moloch, from among his people" (Lev. 20, 5).

"If there be found among you, within any of thy *she'arim* (gates, cities), which JHVH thy God giveth thee, man or woman that hath wrought wickedness in the sight of JHVH thy God, in transgressing his covenant" (Deut. 17, 2).

"And hath gone and served other gods and worshipped them, either the sun, or moon, or any of the host of heaven, which I have not commanded" (Deut. 17, 3).

"And it be told thee and thou hast heard (the *shomea'*) and enquired diligently and behold it be true and the thing certain, that such abomination is wrought in Israel" (Deut. 17, 4).

"Then thou shalt bring forth that man or that woman which have committed that wicked thing, unto thy gates, even that man or that woman, and shalt stone them until they die" (Deut. 17, 5).

"At the mouth of two witnesses (*'edim*) or three witnesses shall the convict (*ha-met*) be put to death; at the mouth of one witness he shall not be put to death" (Deut. 17, 6).

"The hands of the witnesses shall be first upon him to put him to death, and afterwards the hands of *kol ha-'am* .... " (Deut. 17, 7).

"The *nabi* (prophet) which shall presume to speak a word in my name, which I have not commanded him to speak, or that shall speak in the name of other gods, that *nabi* shall die (Deut. 18, 20).

Noteworthy in this series of laws are the following points, all relating to the proceedings in the Federal courts:

a. In Exod. 22, 19 (20) the word *yahoram* is used to mean "shall be put to death." It probably indicates the form of death sentence pronounced by the *kohanim*, during their judicial pre-eminence.

b. In Lev. 20, 2 the *'am ha-areš* is the Federal trial court.

c. In Lev. 20, 4 the *'am ha-areš* is impliedly reproached for leniency towards Moloch-worshippers.

d. In Deut. 17, 7, too, the *'am* is the trial court.

In connection with this whole subject, it will be interesting to note a reported case where the death-penalty was inflicted, which case, according to ancient Hebrew practice, at once became a binding precedent and was restated in statutory form.

It is the case of a man who was the son of a Hebrew woman by an Egyptian. He was charged with having blasphemed the *shem* (a kind of *s-a-r-a-h*), being the public reviling of the Ark of the Covenant, the visible power in the oracle tribunal, which was called *shem* (Exod. 20, 7; Num. 6, 27; Deut. 5, 11; II Sam. 6, 2; I Kings 8, 16. 29; 9, 3; II, 36; II Kings 21, 4. 7; 23, 27; I Chr. 13, 6; II Chr. 6, 5. 6; 7, 20; 20, 8. 9; 33, 4. 7).

There was no doubt that the offence, if committed by a Hebrew, was punishable with death, but the question was raised whether one of the half-blood was subject to the

same penalty. The decision was that though not a pure Hebrew, he came within the class of *gerim* and that *gerim* were liable in the same manner as Hebrews.

Hence the wording of the statute:

"Whosoever curseth (*yeḱallel*) his God shall bear his sin, and he that blasphemeth the *shem* of JHVH shall surely be put to death; *kol ha-'edah* shall stone him,—as well the *ger* as the *ezrah*" (Lev. 24, 15, 16).

The report of the case presents other points of interest. It establishes that the jurisdiction had already vested in the Federal tribunal (*kol ha-'edah*), but that when a case came up for which there was no precedent or statute, the oracle had to be consulted. It also reaffirms the general principle that the witnesses must initiate the execution of the criminal by laying their hands on his head, and attests the law that executions must take place outside of the city-gates (Lev. 24, 11-16, 23).

The wording is as follows:

"And the Israelitish woman's son blasphemed the *shem* and cursed. And they brought him unto Moses: (and his mother's name was Shelomith, the daughter of Dibri, of the tribe of Dan.)" (Lev. 24, 11).

"And they put him in ward, that the mind of JHVH might be showed them" (24, 12).

"And JHVH spake unto Moses, saying:" (23, 13).

"Bring forth the *meḱallel* (him that hath cursed) without the camp and let all the *shome'im* lay their hands upon his head, and let *kol ha-'edah* stone him" (24, 14).

"And thou shalt speak unto the children of Israel, saying, Whosoever curseth his God shall bear his sin" (24, 15).

"And he that blasphemeth the *shem* of JHVH shall be

put to death; *kol ha-'edah* shall stone him, as well the *ger* as the *ezrah*, when he blasphemeth the *shem* shall be put to death" (24, 15).

"And Moses spake to the *B'né-Israel*, that they should bring forth him that had cursed out of the camp, and stone him. And the *B'né-Israel* did as JHVH commanded Moses" (24, 23).

In this connection should be mentioned another old law, closely related to the law of Exod. 22, 19 (20), and apparently designed to supplement the ancient law of *s-a-r-a-h*. Whereas the latter crime was not complete without proselyting activity on the part of the accused, this law punishes the act even when done in secret (*ba-seter*). It is as follows: "*Arur* the man that maketh any graven or molten image, an abomination to JHVH, the work of the craftsman's hand, and sets it up in secret" (Deut. 27, 15).

Like the *yahoram* of Exod. 22, 20, this word *arur* is probably a priestly form of death-sentence. Perhaps different modes of execution are intimated by these variant forms.

In the next lecture, the last of this series, some phases of the Hebrew land-law will be touched upon, and an effort will be made to show that this branch of the original jurisdiction of the *zikhne ha-'ir* soon became a matter of Federal concern, as a necessary step in the policy of unifying the cantons forming the state.

#### IV

The *zikhne ha-'ir*, who had general jurisdiction of all affairs of their canton, must have taken cognizance of all controversies relating to the possession of land. The scanty remnants of the *zikhne ha-'ir* law are, however, insufficient

to show their procedure in such cases. The chief cause of early quarrels about land was the removal of landmarks. In a very early code this was accounted a crime punishable by death. "*Arur* he that removeth another's landmark" (Deut. 27, 17), and Hosea, speaking of the *sare* Judah as deserving condign Divine punishment, exhausts the language of condemnation by comparing them to removers of landmarks (Hos. 5, 10).

This severe treatment of what is, after all, but a trespass, would seem to indicate that the honest acquisition of land was a thing very difficult, if not impossible, and that, in consequence, men who were greedy to enlarge their holdings resorted to fraud as the readiest means to obtain their ends. The conclusion is not remote that the reason for this difficulty in honestly acquiring land lay in the policy of the Federal government making land inalienable either by deed or will, to the end that each family should hold its estate in perpetuity. Such would be the natural course for the conquerors of a settled country. The soldiers would probably claim equal rights in the division.

This supposition finds support in the law of *yabam* as applied in the early days of Hebrew domination: "If brethren dwell together, and one of them die and have no son, the wife of the dead shall not marry without to a stranger (*ish zar*); her husband's brother shall go unto her and take her for his wife. And the first born son (*bekor*) that she beareth shall succeed to the name of his dead brother" (Deut. 25, 5. 6).

That the custom originated in prehistoric antiquity, and had meanings with which we are no longer acquainted, is highly probable. The fact, however, is, as regards our subject, unimportant. Perhaps the majority of the most

modern customs could, if we had the full evidence, be traced back to notions held by primeval savages. Advancing civilization consists, and in all ages has consisted, in the reshaping of established institutions, so as to conform to improved thought and to become useful in furthering progress.

There is no doubt that so soon as the policy of equality of land-holding was adopted by the Federal government, the endeavor was made to conform the *yabam* law to it. While, originally, the brother of the deceased took the widow of the latter for his wife, and there was no question of estate involved, the new policy carried to the brother the landed estate of the decedent, to be held by him in trust for the first-born son of the new marriage, and only on the failure of male issue of the new marriage did he acquire the absolute estate. All this is necessarily implied in the provision that the *bekôr* of the new marriage shall stand in the place of the first husband and bear his name (Deut. 25, 6).

Assuming this, it would follow that a man with a wife and a family of daughters, though the owner of a landed estate, could not provide for the latter. They would have to depend on the generosity of their uncle after he had married their mother. Nor could any foresight or good will of their father alter the situation. If he could have sold the land for money or other portable property, he could have given them the fruits of the sale, but the entail prevented this. In short, to use the technical language of the English law, the land was entailed in tail male, which means that by no means whatever could the owner prevent his male descendants from enjoying it. If male descendants failed, the land went to the decedent's brothers; if there

were none, then to the brothers of the decedent's father; and if this line too failed, then to the nearest kinsman of his *mishpahah*. So much of the ancient law we learn from Numbers 27, 9-11.

It must have been at an early day that a reform was demanded, though of course not before the civil government had superseded the military regime. While the latter was at its height, the soldiers who were conquering the land from its possessors, doubtless claimed it as the fruit and reward of their exertions. In this state of opinion women had small chance to be considered. When, however, the statesmen began to get the upper hand, the injustice of leaving a man's wife and daughters to charity, while others were in lawful enjoyment of the family estate, was recognized. The general law of Numbers 27, 8 is but declaratory of a precedent which had been established. The case is fully stated in the twenty-seventh chapter of Numbers. The five daughters of Zelophehad appeared before Moses and his coadjutors, composing the high court which sat at the door of the *ohel mo'ed*, and asked, as a matter of justice, that they might inherit their father's estate, instead of its going to their uncles. Moses consulted the oracle (brought their *mishpat liphne* יהוה (Numb. 27, 5)). The decision was: "The daughters of Zelophehad speak right; let the inheritance of their father pass unto them" (Numb. 27, 7). And according to the invariable practice this precedent was immediately put into the form of a general statute (Numb. 27, 8).

This was a momentous decision. The mother of these daughters would, according to the ancient custom, still marry her brother-in-law, but she would not take the



family estate with her. The daughters would take it, just as if they had been sons.

That brothers-in-law would not be anxious to carry out the old *yabam* law under such circumstances is only natural. Indeed, the power of the heiress to choose her husband virtually substituted her for a son, and enabled her to confer the name of her dead father upon her own *bekor*. However foreign to the spirit of the old law such a practice would be, it would soon satisfy people's consciences, and fashion would do the rest. Moreover, concurrently with this recognition of women as capable of inheriting, the whole tone of opinion regarding the relation of the sexes underwent a profound change. Especially powerful was the trend toward enlarging the number of prohibited degrees. In the old *arur* code punishment (probably death) is denounced against him that married his step-mother (Deut. 27, 20), his sister, his half-sister (Deut. 27, 22), or his mother-in-law (Deut. 27, 23). This statute was now amended. A new list of capital crimes was made, which included, in addition to those of the *arur* code, marriage with a son's wife (Lev. 20, 12). Moreover, serious penalties, the exact nature of which cannot now be determined, were denounced against marriage with an aunt (Lex. 20, 19), or with the wife of an uncle (Lev. 20, 20).

The feature of this amended code which is most relevant to our present inquiry, is the prohibition to marry a brother's wife. It is not rated as a crime punishable by human law, but it is denounced as *niddah* (abhorrent) (Lev. 20, 21). The only evil consequence threatened is: "They shall be childless." That this provision is a pointed condemnation of the *yabam* marriage, seems clear. The

purpose of the latter was the birth of a son who should stand in the place of the dead man who had no son. And now it was solemnly declared that JHVH himself would prevent the attainment of the object. They would have no son. The marriage would be sterile.

In the state of public opinion thus indicated, the severe blow dealt the *yabam* law by the Zelophehad decision was much aggravated. In short, fashion and morals joined in discrediting the Levirate marriage.

This, however, was not all. The great land-owners of Zelophehad's kin became alarmed. The latter's estate had slipped from their grasp into the hands of a bevy of damsels, whose fancy might bestow them on the dreaded outsider (*ish zar*). In the general greed for increasing their holdings, land-owners from other *mishpahot*, if not from other tribes, might come a-wooing, and by marriage with the heiresses, deprive the kinsmen of their cherished chance to annex the lands of failing lines.

To save what they could, the chiefs of the *mishpahot* of Gilead appealed to the High Court to modify its decree of Numbers 27, 7, by adding thereto a limitation of the right of heiresses in the choice of husbands. They urged that without such limitation, men of other tribes would reduce the state of Gilead by coming in and marrying the women of landed estate.

The tribunal heeded the protest and modified the former decree by declaring that the daughters of Zelophehad might marry whom they would, provided only that their choice fell on men of their own tribe, in order that every one of the tribes of the *B'né-Israel* should keep its own inheritance (Num. 36, 1-9). Whether *mishpahah* or tribe is here meant is not quite clear from the language of the

text. The probability, however, is that *mishpahot* only are intended, and that by *mishpahot* we are to understand recognizable kinsmen. As late as the time of Jeremiah, we find that in the domain of the priest-city of Anathoth, a man could not sell land to whom he would, but that the nearest kinsman had a preferential right to buy. Though the existence of a custom in a priest-city at a late period is no warrant for its general existence at the time throughout the realm, because of the tenacity with which the priests held on to their ancient rights and privileges, yet it is at least good evidence of ancient customs which were, in former times, general. It appears that Hanamel, the son of Jeremiah's uncle Shallum, determined to sell his land, and accordingly made the first offer to his cousin Jeremiah as the one having the preferential right (*ge'ullah*). Moreover, he expressly stated that this preferential right was based on or conjoined with the right of inheritance (*yerushah*), which can only mean that Hanamel was childless, that he had no brothers, that his uncles were dead and that Jeremiah was the next of kin (Jer. 32, 7-8).

We must return, however, to the Zelophehad heiresses. It appears that the modification of the decree did not seriously disturb them. They married their first cousins and thus the estates were kept in the family (Numb. 36, 11. 12).

These cousins, who, in part, owed their success in wooing to the law courts, were not alone in their land-hunger. We have already noticed the drastic denunciation of land-thieves in the *arur* code. Despite everything, the thing went on. Wealth and luxury increased, and the men newly risen to opulence were eager for their aggrandizement. They were not too dainty as to the means whereby

they accomplished their purpose. Some of them doubtless were of the *zikne ha-'ir*, and that tribunal could not be relied on to interfere with them. This is the meaning of Isaiah's bitter cry: He looked for *mishpat* (justice) but received *mispah* (oppression); for equity—and behold iniquity. Woe unto them that join house to house and field to field, till there is no room for others and they remain alone in the land (Isai. 5, 7. 8). Their inward thought is that their houses shall endure forever; they call their lands after their own names (Ps. 49, 12 (11)).

The strife degenerated into a contest between the old families and the new rich, and, as a consequence, the decaying families and the poor in general fared badly between the upper and nether mill-stone.

The *yabam* law, which was one means of securing the inalienability of landed estates, was treated with scant courtesy by the rising families, was assailed as immoral by the Federal *kohanim* and statesmen, and had doubtless fallen under the social ban. No appeal to antiquity could save it from falling into obsolescence.

The result was inevitable. As in all nations with a genius for jurisprudence, the Hebrews employed the *fictio juris*, the legal fiction, to set aside laws and customs which they dared not repeal outright. They determined that the woman who could not marry anyone but her brother-in-law, should be free of the obligation, if the latter in proper form declared he would not marry her.

This was a substantial repeal of the *yabam* law, by the abandonment of its only effective feature, the sanction or vindictory part thereof. For once the Federal government and the cantonal councils were of one mind. The *zikne ha-'ir*, as has been seen, had the largest general powers.

In earlier days, when they were still enforcing the *yabam* law, they doubtless compelled specific performance of the brother-in-law's duty, just as in another class of matrimonial cases they deprived a man of his almost indefeasible right to divorce his wife (Deut. 22, 13-19). Certain it is that they never hesitated to enforce their judgments by punishing men in body and estate, and were by no means chary of inflicting the death penalty (Deut. 19, 12. 21; 22, 21. 22. 24. 25).

That the violation of the *yabam* law might well be punished by death appears from the story of Tamar, Judah's daughter-in-law, whose husband Onan was slain by JHVH for fraud on this same law (Gen. 38, 1-10).

The particular ceremony by which legal fiction effected the gradual disuse of the *yabam* law was what came in later times to be called the *ḥaliṣah*. It is fully described in Deut. 25, 5-10. The details are not all comprehensible. They doubtless, in part at least, simulate the proceedings which were had when the trial was a very real one with serious consequences to the defendant. The first step evidently was that the widow explicitly asked her brother-in-law to marry her, and he declined. Thereupon she instituted suit, that is, she went to the city gate, to the *zeḳenim*, and made this formal complaint: My husband's brother refuses to marry me, will not comply with the *yabam* law. Whereupon the *zeḳne ha-'ir* summoned him. He appeared. They informed him what the complaint was. The contingency of his replying that the complaint is not true, that he is quite ready to marry the woman, is not mentioned. His refusal was taken for granted. If he stood by it and said, I do not wish to take her, this confession of his guilt was followed by no judgment of the tribunal. No redress was

given to the complainant, no punishment was decreed against the defendant. What happened was that the woman drew off one of his shoes, ceremoniously spat in his presence, and uttered an antique formula, which probably had once a sinister meaning, but had become harmless and even unintelligible. These were the words: "So shall it be done unto that man that will not build up his brother's house. His name shall be called in Israel, The house of him of the loosed shoe." This accomplished, the parties went their way, and probably the woman was free to marry whom she would, which, after all, was what everybody had intended from the first.

There is but one other instance of *zikne ha-'ir* law which concerns us in the present inquiry. It occurs in the Book of Ruth.

According to the author's presentation, the duty which the law, as we know it, puts upon the *yabam* or husband's brother, attaches to the *go'el* or near kinsman of the *mishpahah*. This duty, moreover, is not primary, but incidental to the exercise of the right of *ge'ullah*, which is the preferential right of the next of kin to purchase lands which a member of the *mishpahah* wishes to sell, before they can be sold to a buyer from without. The *yabam* duty, in short, is a mere incident of the *ge'ullah*. This right of *ge'ullah* is assignable by one *go'el* to another in the order of succession, which is determined by nearness of kinship, and such assignment or waiver carries with it no reproach to anybody. In order that the transaction may be legally effective, certain forms are necessary. It must be at the gate, in the presence of at least a quorum (ten) of the *zekenim*. The assignor, next of kin, addressing his successor, says: "You may buy it for yourself," and with the

words delivers to him the shoe which he has just drawn from his foot. The assignee takes the shoe, and, addressing the *zeḱenim* and the by-standers, says: "Ye are witnesses this day:" (then formally recites what he has acquired) and closes by repeating the words: "Ye are witnesses (*'edim*) this day." The *zeḱenim* and the by-standers say in chorus; *'edim* (witnesses), and the transaction is closed,—is firm and stable forever (*leḱayem kol dabar*) (Ruth 4, 7).

Needless to say, there is no tittle of evidence that there ever was in Israel a compound *ge'ullah-yabam* law such as is here described. Moreover, there is reason to believe that the author knew this perfectly well, having before him all the data accessible to us. His acquaintance with the most ancient form of *yabam* law, as exemplified in the story of Tamar (Gen. 38, 6-30) is attested by the utterances of Ruth 1, 11 and 4, 12. That he was aware of the custom which allowed the woman to propose to the *yabam* (Deut. 25, 7) is seen in Ruth 3, 9, and that the drawn-off shoe plays a part in it (Deut. 25, 5-10) he tells in Ruth 4, 7. 8.

In view of these facts, it would be rash to doubt his knowledge of the law of Numbers 27, 7-10, and one can hardly go wrong in supposing that he had read the *ge'ullah* transaction of Jeremiah 32, 7-12.

Having this knowledge, it was as plain to him as to us that when Mahlon died, leaving no children, no brothers and no uncles, the inheritance went to the next of kin (Numb. 27, 11), the *peloni almoni* (Mr. So and So) of Ruth 4. There was no power either in Naomi or in Ruth to sell, because they had no title of any kind. *Peloni almoni* was

the absolute owner. There was no room, therefore, for *ge'ullah* and, *a fortiori*, none for *yabam* duty.

The author, however, wrote his imaginary law for a purpose. He was creating one of the great masterpieces of the world's literature, with the design to show that marriage with non-Hebrew women might not only be harmless, but highly beneficial in bringing into the fold the most noble and charming of foreign damsels. In the restricted life of Eastern women, he could find no class to whom was accorded the liberty of making advances, save the childless widow, and she only to the *yabam*. The situation rendered an actual brother-in-law impossible, so his part was taken by the noblest gentleman of Bethlehem. Everything runs on to a happy ending, and the baby-boy Obed becomes the ancestor of King David.

We may therefore, with safety, eliminate from the discussion the law as laid down in Ruth, though on certain minor points it may be informing.

The only great land-law remaining to be considered is that of Leviticus (25, 10-34). Its salient provisions are as follows:

"And ye shall hallow the fiftieth year and proclaim liberty (*deror*) throughout the land to all the inhabitants thereof: it shall be a jubilee unto you; and ye shall return every man unto his possession (*ahuzzah*), and ye shall return every man unto his family (*mishpahah*)" (Lev. 25, 10).

"In the year of this jubilee ye shall return every man unto his possession" (*ahuzzah*) (Lev. 25, 13).

"According to the number of years after the jubilee thou shalt buy of thy neighbor; according to the number of years of the fruits he shall sell unto thee:" (Lev. 25, 15).



"According to the greater number of years thou shalt increase the price thereof, and according to the fewness of years thou shalt diminish the price of it; for it is a number of crops he is selling thee" (Lev. 25, 16).

"The land shall not be sold in perpetuity (Lev. 25, 23).

"Ye shall grant *ge'ullah* (redemption) for land" (Lev. 25, 24).

"If thy brother be waxen poor, and hath sold away some of his *ahuzzah* (estate), and his next *go'el* (kinsman) come to redeem it, he shall have the right to do so" (Lev. 25, 25).

"If the man have no *go'el*, but can gather the means to redeem it" (Lev. 25, 26),

"Then let him count the value of the years since the sale (deduct that sum from the purchase money) and pay the balance unto the man to whom he sold it: then he may return to his *ahuzzah*" (Lev. 25, 27).

"If he cannot gather the means to redeem it, then it shall remain in the buyer's possession until the year of jubilee: and in the year of jubilee he is entitled to return to his *ahuzzah*" (Lev. 25, 28).

"If a man sell a dwelling-house in a walled city, he may redeem it within a whole year after it is sold" (Lev. 25, 29).

"If it be not redeemed within the space of a full year, it shall be the buyer's in perpetuity throughout the generations; it does not revert in the jubilee" (Lev. 25, 30).

"But houses in *hāserim* (villages) which have no wall round about them are to be treated as fields: they are subject to *ge'ullah* and revert in the jubilee" (Lev. 25, 31).

"As to the Levite cities—the houses of the cities of their possession, are subject to perpetual *ge'ullah* for the Levites" (Lev. 25, 32).

"And if a man of the Levites fail to redeem a house in a Levite city which he has sold, it reverts to him in the jubilee" (Lev. 25, 33).

"The field in the *migrash* of their (Levites') cities may not be sold; it is an *ahuzzah* in perpetuity" (Lev. 25, 34).

A mere reading of this jubilee-statute shows that it has no reference to the days when the *zikhne ha-'ir* were the great men of the country. The earliest allusions to it are found in Jeremiah and Ezekiel. The latter speaks of the seller returning and makes a gloomy prediction that it will not happen, the trumpet that has been blown, presaging misery instead of happiness (Ezek. 7, 12, 13, 14).

He also points out that royal grants to members of the royal family are *nahalah*, that is, are not to revert, but that royal grants to others revert in the *deror* year (Ezek. 46, 16, 17).

And this allusion to the blowing of the trumpet and to the *deror* year recalls the statute (*berit*, covenant) made during the reign of Zedekiah in the most solemn fashion before JHVH, to wit: They cut a calf in twain, and passed between the parts thereof, the *sarim* of Judah, and the *sarim* of Jerusalem, the *sarisim*, the *kohanim*, and *kol 'am ha-areṣ*. By the terms of this *deror* law, every man was bound to free his Hebrew slaves. On that occasion Jeremiah denounced the non-observance of the old law forbidding Hebrew slavery, and also castigated those who were violating the new statute (Jer. 34, 8-22).

The connection between Leviticus 25 and these passages from Jeremiah and Ezekiel seem clear.

We are, however, not concerned here with the slavery question, though it would appear to have been inseparably connected with the land question, in view of Ezekiel's words wherein the expression *deror* year is used for the jubilee year of Leviticus.

We may take it for granted that the land-greed of which something has been already said, did not abate while the cantonal magnates had their own way. The jubilee statute seems to be a compromise between the parties to this age-long contest. By it the old Federal policy of the inalienability of land was definitely abandoned. The *zikne ha-ir*, the magnates who dwelt in the walled cities, who were, in fact, the great land barons, had finally triumphed, though concessions had to be made to other interests. By the terms of the compromise, the absolute inalienability of land was abolished; houses in cities were made practically alienable, and agricultural lands and village-houses, while they could not be sold in perpetuity, could nevertheless be alienated by the owner, on condition that they should revert in the jubilee year and be subject to *ge'ullah* at any time before. The Levites (*kohanim*) succeeded in securing for themselves the right of *ge'ullah* and of jubilee-reversion in their walled cities, while as to their *migrash* fields they maintained the ancient law of total inalienability.

The result was perhaps as good as could have been expected. The growth of commerce and of wealth had brought into more active operation economic laws which defeated the plans devised by the Federalists in the earlier times of greater simplicity. The great barons were now authorized by law to acquire perpetual estates in their val-

uable city holdings, and to extend them without limit; their purchased agricultural estates, before held in defiance of ancient law, were made secure until the *deror* year, and this provision must have added to their power and influence.

The Levites (*kohanim*) retained or reconquered the placid security of primitive times, while the masses of the farmers, though they derived only moderate benefits during their active lives, could at least hope that their children's condition would be permanently improved.

The achievement, though far short of the hopes of the optimists, was greater than it may seem. The old law of inalienability had been so uniformly disregarded as to have become practically obsolete, and the lands of the poor were being gradually absorbed by the land-barons. Any degree of amelioration was an advance, and none could have been secured if the influence of the common people had not steadily grown. At least one of the great estates of the realm, the *'am ha-ares*, was making a sturdy fight for the rights of the masses. In the struggle for the Zedekiah statute, they took a leading part, and though the powerful classes were tempted to evade the laws which hampered their efforts for control of all kinds, some progress was always made.

We must not, however, prolong remarks on a subject which is too remote from our main theme, to be adequately treated in this connection. There are many questions of equal interest which must be discussed before a proper understanding of the polity of the ancient Hebrews can be attained. It is necessary to understand how the conflict between the centrifugal forces, represented by the *zikhne ha-'ir*, and the centripetal forces of the nation was carried on, and by whose activity it was finally decided in favor

of the latter. This involves an investigation into the part played by the *Nebiim* and the Levites (*kohanim*), and by the former I mean, not the writing prophets, but the guild which is typified by the illustrious old hero Elijah. When I first began these investigations I intended to take up all the laws recorded in the Bible, with the design of developing therefrom a complete scheme of the Hebrew Constitution and laws. It soon became apparent that in the *zikne ha-'ir* laws we had a system more ancient than the accepted codes. Further examination revealed the cantonal basis of the Federal government and showed clearly the necessity of going to the bottom of the *zikne ha-'ir* laws. The result has been that what was conceived to be the main subject has scarcely been touched upon, and its consideration must be postponed to a future occasion.

It remains only to summarize what I conceive to be the result of this preliminary work.

At the Exodus the Hebrews were arrayed as tribes with sub-divisions. As they advanced and the necessities of war dictated a more efficient organization, they formed into regiments (*alaphim*) with proper sub-divisions and aggregations. Both forms of organization were in their nature military, the latter specifically so. As they conquered settled territory, with established governments, they learned a new lesson. The pre-Israelite inhabitants lived in many cantons, each constituting a little kingdom, called a "city." The name was not literally exact. The canton had in it, besides the walled city, certain towns, villages, and fields, and sometimes it had one or more additional cities, all looking up to the royal city, which was the seat of government where the King held his court. The Hebrews recognized and adopted this subdivision of the

country, and in part accepted the mode of government as a practical solution of the new and intricate problems which they had to solve. They, however, abolished royalty. Councils, somehow representative in their make-up, became the ruling power in these little cantons, which were to be the constituent elements of a central Federal government. The conquest was slow, and the progress of nationalization tardy. The policy of exterminating the natives, which was the obvious one for an invading horde that started out to take possession of a whole country, had to be abandoned. Concessions were made to the natives, who, under the name of *gerim*, exercised much influence in the Hebrew cantons, which superseded the old city-states. The national policy of declaring JHVH as the one God of the country was hindered at every step by the stubborn conservatism which adhered to the multifarious cantonal gods, and the central government established at Shiloh found great difficulty in bringing the cantonal councils to a lively comprehension of the importance of stamping out the old worship.

There was one other leading feature of policy in the new nation. The land for which the Hebrews so longed was to be divided as equally as possible among those who had won it by their blood. In this matter, too, the central government had to rely on effective administration by the cantonal councils. The obstacles encountered were great. Leading chieftains naturally claimed greater shares, many natives kept their holdings, and the theoretical idea of equality, which would, under the most favorable circumstances, have been only partially translated into practice, was but slimly carried out. The principle, however, that family land was inalienable was adopted as law. Had this been consistently carried out, there would not have arisen

a slavery question. Unfortunately, however, though shut out at the front door, it slunk in at the side. The ancient severe notions of debtors' law were at first accepted. The new farmers were not all equally skilled or capable. Some of them had to borrow, and the penalty of not paying was slavery. Men with talents for accumulation were then, as now, alert to seize opportunity. So long as they kept within the law, they felt no reproach of conscience, and often they went beyond in order to attain their ends. Many of the farmers fell into debt, and not only lost their holdings, but their liberty and that of their children. As the state grew in wealth, the application of economic laws became more and more certain, and though the state and the successful classes prospered, the poor, at the other end, were badly off. The most energetic efforts of the central government to ward off these evils fell far short of success. The rising men held the power in the cantonal councils, and they favored their class.

There was thus a steady conflict between the central government and the cantonal governments, the latter following local policies and the former working for a larger, freer, unified state.

The removal of the jurisdiction over *s-a-r-a-h* from the cantonal to the Federal courts was a long step forward. The struggle to maintain the Federal land laws was less successful, but, in the end, a partial victory was achieved by the Nationalists, who had added to their forces a new element by the introduction of representatives of the poorer classes (*dallim*) into the great Federal council (*'am ha-ares*). The rights of the masses came to be more and more regarded, and the aristocratic tendencies of the country magnates, sitting as *zikne ha-'ir*, were curbed by

joining with them Federal judges with plenary powers (the *shophetim* of the later period), and by the establishment of Federal courts, with superior jurisdiction in cases involving great national policies. The primacy of the nation was finally assured and the *zikne ha-'ir* sank to a subordinate position.

How deeply this nationalization was rooted in the minds and hearts of the people we can learn from the state of affairs in Ezra's time, more than a century after the downfall of the old Judean state. The burning question was that of intermarriage. That it shook the state to its center was inevitable. Great personages had married non-Hebrew women, and all that affection, political influence, and social power could effect to avoid the disruption of families was put in motion. Doubtless the great literary genius of the Book of Ruth was evoked by the sad situation.

Ezra, austere, single-minded, and inflexible, insisted on his view as the sole salvation of church and state, and however bitter the remedy, the wisest men of the country agreed with him.

A general convention was called to be held at Jerusalem (Ezra 10, 7-9). It was soon seen that the task of righting present conditions could not be accomplished in a day or two. The resolution was reached, that a special court should be instituted to hear the cases, the work being so arranged that it could be finally completed in three months. And this was the manner of it: The men who had taken alien wives were summoned to appear, canton by canton, at stated times, bringing with them their *zikne ha-'ir* and their *shophetim*, and then the special Federal tribunal decided each case on the merits (Ezra 10, 14).



We see here completed the process which has been described. The *zikhne ha-'ir* are still a body representing their canton, familiar with its people, its customs; the *shophetim* are their legal advisers on the law as modified by Federal policies, and the Federal tribunal at Jerusalem is bound to hear what they can say, and its decision is supreme, binding, and final.

It is in the light of these considerations that we must view the *zikhne ha-'ir* law, which has been the main theme of these lectures. If they have any value, it is in making clear that the state was always viewed as a bundle of cities, and that under such circumstances the volume of *zikhne ha-'ir* law must have been very great; that the instances and the statutes of that law which survive are but a small fragment; that scanty as are the sources, they are still the best for learning the foundations of the Federal law which superseded the canton law.

That the laws of the Pentateuch can be better understood when we appreciate these facts, seems clear. May time and opportunity be given me to continue the task.

In any event, I may be permitted to express the hope that others who are interested in the subject may take it up and add their contributions to the work of giving us a better understanding of the constitutional and legal history of the ancient Hebrews.



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## INDEXES

---



## BIBLICAL PASSAGES CONSIDERED

GENESIS.	PAGE
4, 17 .....	14
20, 1 .....	14
23, 3-20 .....	34
23, 4 .....	19
26, 33 .....	14
28, 19 .....	14
34, 8-27 .....	28
38, 1-10 .....	69
38, 6-30 .....	71
46, 27 .....	4

EXODUS.	
2, 22 .....	19
3, 11 .....	35
4, 10 .....	35
12, 49 .....	20
13, 18 .....	10
17, 16 .....	16
18, 3 .....	19
18, 13 .....	36
18, 21 .....	8, 9
19, 5 .....	4
20, 7 .....	59
20, 10 .....	20, 27
21, 15, 17 .....	52
22, 9 (10) .....	55
22, 19 (20) ....	57, 59, 61
22, 20 (21) .....	20
23, 9, 12 .....	20
32, 26, 27 .....	27

LEVITICUS.	
19, 33, 34 .....	20
20, 2, 4 .....	58, 59
20, 5 .....	58
20, 9 .....	52

LEVITICUS. (continued)	PAGE
20, 12, 19, 20, 21 .....	65
24, 11-16, 23 .....	60, 61
24, 14 .....	55
24, 15, 16 .....	60
24, 22 .....	20
25, 10-34 .....	72
25, 10, 13, 15 .....	72
25, 16, 23, 24, 25, 26, 27, 28, 29, 30, 31 .....	73
25, 32, 33, 34 .....	74
25, 45, 47-49 .....	21

NUMBERS.	
1, 16 .....	8
6, 27 .....	59
9, 14 .....	20
10, 35, 36 .....	5
21, 24, 25, 32, 34, 35 ...	13
25, 1-5 .....	21, 40
25, 5-9 .....	21
25, 11-13 .....	22
27, 5 .....	64
27, 7-10 .....	71
27, 7 .....	64, 66
27, 8, 9-11 .....	64
27, 11 .....	71
32, 1-33, 41, 42 .....	13
35, 13 .....	21
35, 24, 25 .....	50
36, 1-9 .....	66
36, 11-12 .....	67

DEUTERONOMY.	
1, 16 .....	20
1, 28 .....	28
3, 5 .....	27

DEUTERONOMY. (con.)	PAGE
5, 11 .....	59
5, 14 .....	20, 27
6, 9 .....	27
10, 19 .....	20
11, 20 .....	27
12, 15. 17. 18 .....	27
13, 2. 3 (1. 2) .....	54
13, 6 (5) .....	53, 54
13, 7-11 (6-10) .....	55
14, 27 .....	27
14, 28. 29 .....	20
15, 7 .....	27
16, 5. 11 .....	27
17, 2-7 .....	58
17, 7 .....	59
18, 20 .....	59
19, 12, 21 .....	69
19, 15 .....	57
19, 16 .....	56
19, 17-19. 21 .....	57
21, 1-9 .....	48
21, 5 .....	50
21, 18-21 .....	35, 51
22, 9 .....	49
22, 13-21 .....	48, 69
22, 21. 22. 24. 25 .....	69
22, 23-27 .....	49
24, 14. 15. 17 .....	20
25, 5-10 .....	69, 71
25, 5. 6 .....	62
25, 6 .....	63
25, 7 .....	71
25, 19 .....	16
26, 11-13 .....	20
27, 15 .....	61
27, 17 .....	62
27, 20. 22. 23 .....	65
29, 10 .....	19
31, 12 .....	19, 27
32, 8-12 .....	5
32, 30 .....	10
33, 9 .....	22
33, 17 .....	10

JOSHUA.	PAGE
1, 14 .....	10
4, 12 .....	10
6, 18 .....	7
7, 14-18 .....	9
7, 16-18 .....	7
8, 35 .....	19
9, 3-27 .....	29
9, 23-27 .....	30
9, 27 .....	22
12, 9-24 .....	15
13, 17-21 .....	26
13, 17. 23-28 .....	15
13, 28 .....	13
13, 30. 31 .....	26
15, 21-62 .....	26
15, 63 .....	17
18, 1 .....	22
18, 1. 8 .....	31
18, 12-28 .....	26
19, 15. 22. 30. 38. 41-47..	26
19, 51 .....	31
20, 4. 5. 6 .....	50
20, 9 .....	21
22, 9 .....	43
22, 12 .....	31

## JUDGES.

1, 19. 21. 27. 29. 30. 31	
32. 33. 35 .....	17
3, 19 .....	36
4, 5 .....	12
5, 16. 17 .....	42
6, 1-6 .....	16
6, 8. 11. 24-32 .....	36
6, 15 .....	8
7, 7. 22 .....	39
7, 11 .....	10
7, 23. 24 .....	39
7, 23-25 .....	16
8, 4-17 .....	39
8, 22. 27 .....	41
9, 1-6 .....	32
9, 2 .....	16
9, 22 .....	11

JUDGES. (continued)	PAGE
II, 4 .....	43
II, 11 .....	11
12, 2. 4-6 .....	42
12, 4. 6 .....	43
12, 7 .....	24, 42
17, 6 .....	32
20, 1 .....	44
20, 10 .....	10
20, 14 .....	24
20, 47 .....	44
21, 9 .....	44
21, 19 .....	31
21, 23 .....	24
21, 25 .....	32

## I SAMUEL.

I, 3 .....	41
2, 13-17. 14 .....	41
3, 20 .....	41
4, 18 .....	12
6, 15 .....	46
7, 16. 17 .....	12
9, 21 .....	35
10, 17-25 .....	8
11, 1-15 .....	45
16, 4 .....	47
18, 6 .....	24
18, 8 .....	10
21, 1-9 .....	30
22, 9-23 .....	30

## II SAMUEL.

2, 1-3 .....	33
6, 2 .....	59
15, 19-22 .....	19
15, 27 .....	55
21, 1-10 .....	30
21, 1-11 .....	28
24, 9 .....	11

## I KINGS.

2, 26 .....	46
3, 4-15 .....	31

I KINGS. (continued)	PAGE
4, 7-19 .....	11
8, 16. 29 .....	59
8, 41-43 .....	19
9, 3 .....	59
11, 28. 31 .....	11
11, 36 .....	59
12, 16 .....	11
12, 17 .....	24
15, 20 .....	24
21, 8. 12 .....	47
22, 19 .....	36

## II KINGS.

2, 19 .....	48
4, 13 .....	47
10, 1-3 .....	47
17, 24. 26 .....	24
21, 4. 7 .....	59
22, 14 .....	30
23, 5. 19 .....	24
23, 17 .....	48
23, 27 .....	59

## ISAIAH.

9, 3 (4) .....	16
9, 14 .....	53
5, 7. 8 .....	68
21, 5 .....	10
30, 1 .....	53
40, 9 .....	24
44, 26 .....	24
65, 2-7 .....	53

## JEREMIAH.

I, 1 .....	46
I, 6 .....	35
4, 4 .....	47
4, 16 .....	24
5, 23 .....	53
7, 12 .....	22
7, 17 .....	25
7, 17. 34 .....	47
7, 34 .....	24

## JEREMIAH. (continued) PAGE

8, 1 .....	47
9, 10 (11) .....	25
10, 22 .....	25
11, 6. 12 .....	25
11, 21 .....	46
17, 25 .....	47
25, 15. 18 .....	25
26, 2 .....	25
28, 16 .....	53
29, 32 .....	53
32, 7. 8 .....	67
32, 7-12 .....	71
33, 10 .....	24
34, 8-22 .....	74
34, 22 .....	25
36, 9 .....	25
40, 5 .....	25
44, 2. 6. 17 .....	25
44, 6. 17 .....	26

## EZEKIEL.

7, 12. 13. 14 .....	74
39, 9 .....	26
46, 16. 17 .....	74

## HOSEA.

4, 15. 16 .....	53
5, 10 .....	62
9, 1-15 .....	53

## MICAH.

5, 1 .....	9
------------	---

## HABAKUK.

2, 18. 19 .....	53
-----------------	----

## ZEPHANIAH.

PAGE

1, 10 .....	30
-------------	----

## ZECHARIAH.

1, 12 .....	26
-------------	----

## PSALMS.

49, 12 (11) .....	68
-------------------	----

## PROVERBS.

6, 12. 13 .....	53
20, 20 .....	52
21, 28 .....	55
23, 20. 21 .....	54
28, 7 .....	54

## RUTH.

1, 11.....	71
3, 9 .....	71
4, 7. 8. 12 .....	71

## EZRA.

10, 7-9. 14 .....	80
-------------------	----

## I CHRONICLES.

13, 6 .....	59
16, 39 .....	31
21, 5. 6 .....	11

## II CHRONICLES.

2, 16 (17) .....	20
6, 5. 6. 7. 20 .....	59
6, 32. 33 .....	20
20, 8. 9 .....	59
32, 21 .....	10
33, 4. 7 .....	59



## INDEX

	PAGE
Abiezer, the clan of, .....	31, 34, 38
Abimelech, king of Shechem .....	11, 16, 31, 32
Aborigines of Canaan .....	16-18
Abraham .....	14, 19, 27, 32-34
Achan, case of, .....	7, 8
<i>aḥuzzah</i> (estate) .....	33, 72, 73
Ai .....	7, 22, 29
<i>alaphim</i> , see <i>eleph</i> .	
' <i>am</i> , <i>ha-'am</i> (council, trial-court) .....	3, 36, 59
<i>ha-'am</i> (the army) .....	40
' <i>am ha-areṣ</i> (federal assembly) .....	3, 4, 76, 79
-(federal trial-court) .....	58, 59
-of Hittites .....	19, 33
' <i>amad 'al</i> (act or serve) .....	36
Ammonites .....	42, 44, 45
Amorites, .....	13, 17
<i>anashim</i> (council) .....	4
<i>anshe</i> Anathoth .....	46
<i>anshe</i> Beth-Shemesh .....	46
<i>anshe ha-'ir</i> .....	28, 33, 35, 36, 39, 48, 49, 54
<i>kol anshe 'iro</i> .....	52
<i>anshe</i> Jabesh .....	45
<i>anshe</i> Penuel .....	38
<i>anshe</i> Shechem .....	32
<i>anshe</i> Succoth .....	38
Anathoth, priest city, .....	46, 47
Ark of the Covenant .....	7, 8, 59
Army Organization .....	7-10, 23, 40, 64, 77
<i>arur</i> (death penalty) .....	52, 61, 65, 67
<i>arur</i> code .....	65, 67
' <i>asarot</i> (squads of ten) .....	8
Asher .....	17, 26, 39
Asherah' .....	34, 35
Asylum City .....	50
Baal .....	34, 35, 36, 51
Baal-Peor .....	21, 40

	PAGE
<i>bamah</i> (high-place) .....	30
<i>banot</i> (dependent cities) .....	13, 15, 17
<i>be'alim</i> (council) .....	4, 33
<i>ba'ale</i> Shechem .....	31
Bedouins, incursions of .....	15, 38, 39
<i>bekor</i> (first-born son) .....	62, 63, 65
Benjamites, war against .....	44
<i>ben sorer u-moreh</i> (missionary apostate) .....	51-54
<i>berit</i> (covenant, statute) .....	74
<i>bet ab, bet abot</i> (family) .....	7, 8, 11, 34
<i>bet Elohim</i> (temple) .....	28, 30
Bethlehem .....	9, 47
Beth-Shemesh .....	9, 46
Blaspheming the <i>shem</i> , see <i>sarah</i> .	
B'né Ammon, see Ammonites.	
B'né Benjamin .....	24
B'né Gad .....	13
B'né Heth .....	32
B'né Israel .....	12, 18, 24, 57, 61, 66
B'né Jacob .....	28
B'né Levi .....	50
B'né Reuben .....	13
 Canaan .....	4, 12, 13
Capital City .....	29, 46, 47
Census of <i>gerim</i> .....	20
City, building of .....	14
City-gate .....	3, 4, 27, 28
City-gods .....	6
City, fortified .....	15, 16, 23, 27
City-kings, .....	6
City-Kingdoms, see City-States.	
City-States (cantons) .....	4, 6, 14-16, 22, 23, 27, 30, 31, 33-36, 43, 46, 77
composition of, .....	15, 23, 77
ecclesiastical power of, .....	46
pre-Israelite .....	14-16, 27-32, 43
Cities of Gilead .....	42
Cities of Hebron .....	33
Cities of Judah .....	9, 24, 25, 26
Cities of the Land, .....	23, 24
Connubium, right of, .....	28
Council, .....	23, 28, 31, 32, 33, 34, 36, 38, 39, 45, 78
City- .....	6, 79
national- .....	2, 3, 44, 45

	PAGE
<i>dallim</i> (poorer classes) .....	79
David .....	9, 10, 11, 19, 24, 30, 33, 72
<i>dayan</i> (officer, judge) .....	40
Deborah .....	11, 41
Song of, .....	12, 42
<i>deror</i> (liberty) .....	72, 73, 75, 76
Dinah .....	28
<i>'ed, 'edim</i> (witness) .....	56, 58, 71
<i>'edah</i> (national council) .....	29, 50
Elders .....	3, 16, 52
<i>eleph, alaphim</i> , (thousands, regiments, cities) ....	8, 9, 10, 34, 77
Eli, priest-judge, .....	12, 41
Elisha .....	47, 48
<i>em</i> (fortified city) .....	15
Ephraim .....	10, 17, 26, 39, 42, 43
Ephron .....	34
Ezra .....	80
<i>ezrah</i> (native) .....	20, 60, 61
Federal Government .....	43, 45, 62, 63, 68, 75
Court .....	50, 54, 59, 60, 80, 81
Fictio Juris (legal fiction) .....	68, 69
<i>gebarim</i> (soldiers) .....	7, 8
<i>ger, gerim</i> (alien) .....	19, 20, 21, 57, 60, 61, 78
<i>ger we-toshab</i> (resident alien) .....	19, 21, 33
<i>ge'ullah</i> (right of redemption) .....	67, 70, 72, 73, 75
<i>ge'ullah-yabam</i> law .....	71
Gibeah .....	45
Gibeon .....	22, 27, 28, 29, 30, 31, 32, 33
Gideon .....	8, 11, 31, 32, 34-38, 41, 42, 51, 54
Gilead .....	12, 24, 26, 38, 42, 43, 44, 46, 66
Gilgal .....	45
<i>go'el</i> (kinsman) .....	70, 73
<i>go'el ha-dam</i> (executioner) .....	48, 50
<i>goyim</i> (nations) .....	25
<i>hai JHVH we-hai adoni ha-melek</i> (form of oath) .....	19
<i>halisah</i> , ceremony of, .....	69-71
<i>hamishim</i> (companies of fifty) .....	8, 10
<i>hammushim</i> (soldiers) .....	10
Hanamel, sells his land to Jeremiah .....	67

	PAGE
<i>ḥaradah, wayeherdu</i> (welcome) .....	47
<i>ḥašerim</i> (villages) .....	13, 15, 73
<i>ḥawwot</i> (villages) .....	13, 15
Hebrew Commonwealth, division of, .....	7, 8, 49
Hebron .....	24, 33
<i>ḥeleḳ</i> (portion) .....	4
<i>ḥerem</i> (prohibited) .....	7
<i>yahoram</i> (priestly form of death-sentence) .....	57, 59, 61
High Court .....	47, 66
Hittites .....	19, 33, 34
Inheritance, status of women, .....	63-65
<i>'ir melukah</i> (capital city) .....	29
<i>ish</i> (collective-men) .....	47
<i>ish zar</i> (stranger, outsider) .....	62, 66
Ittai of Gath .....	19
Jabesh-Gilead .....	44, 45
Jacob .....	14, 27, 28
Jehu .....	12, 47
Jephthah .....	11, 12, 24, 42, 43
Jeremiah .....	24, 35, 46, 67
Jeroboam .....	11, 24
<i>Jerub-baal</i> (Gideon) .....	36
Jerusalem .....	17, 24, 25, 26, 30, 74
Jethro .....	8, 9, 10
Joash, chief of Abiezer .....	34, 35
Joseph, <i>bet</i> -(house of, ten tribes) .....	10, 11
Joshua .....	7, 9, 19, 22, 28, 29, 30
Josiah .....	24, 48
Jubilee-statute .....	74, 75
<i>(ḳallel), meḳallel, yeḳallel</i> (curse) .....	60
<i>ḳašin</i> (chieftain) .....	42, 43
<i>ḳiddeshu</i> (sanctified) .....	46
<i>kohanim</i> (priests, federal delegates)	
49, 50, 55, 56, 57, 59, 68, 74, 75, 76, 77	
<i>kol ha-'am</i> (council, federal court) .....	45, 54, 55, 58
<i>kol 'am ha-areš</i> (federal council) .....	74
<i>kol ha-'edah</i> (general assembly) .....	29, 60
<i>kol ish (anshe) Israel</i> (national assembly) .....	41, 45
<i>kol Israel</i> (all Israel) .....	11
<i>kopher</i> (compensation, Wergild) .....	30

	PAGE
Land Laws .....	51, 61 ff., 72
<i>lekayem kol dabar</i> (firm, stable) .....	71
Levirate Marriage .....	62 ff.
Levites .....	6, 22, 75, 76
<i>liphneh</i> JHVH (trial by oracle) .....	43, 56, 64
<i>liphneh ha-kohanim</i> (trial by priests) .....	56
<i>mal'ak</i> JHVH ( <i>nabi</i> , messenger) .....	34
Manasseh .....	10, 11, 13, 17, 26, 31, 34, 39
Marriage, prohibited degrees, .....	65
<i>mat'ot</i> (tribes) .....	7, 8
<i>mehokek</i> (officer) .....	40
<i>melek</i> (king) .....	29, 40
<i>me'ot</i> (companies of hundreds) .....	8, 10
<i>met</i> , <i>ha-</i> (convict) .....	58
<i>midbar</i> -thorns .....	38, 39
<i>migdal</i> (tower) .....	38
<i>migrash</i> (fields) .....	74, 75
Military Chiefs (judges, <i>shophetim</i> ) .....	12, 14, 39, 40, 41
Military organization, see Army Organization.	
<i>mishneh</i> (quarter of Jerusalem) .....	30
<i>mishpahah</i> , <i>mishpahot</i> (family, clan) .....	7, 8, 10, 35, 64, 66, 67, 70, 72
<i>mishpat</i> (justice, case) .....	20, 64, 68
<i>mishpat</i> (oppression) .....	68
Missionary Apostate, see <i>sarah</i> .	
<i>moreh</i> (teacher) .....	53
Moses .....	5, 8, 12, 19, 21, 31, 35, 36, 40, 64
<i>na'ar</i> (clerk) .....	38
<i>nabi</i> , <i>nevim</i> (prophet) .....	6, 34, 53, 54, 59, 77
Naboth .....	47
<i>nahalah</i> (permanent possession) .....	74
Nahash the Ammonite .....	44, 45
Naphtali .....	17, 26, 39
<i>nasi</i> , <i>nesiim</i> (prince) .....	9, 28, 29
<i>nesi elohim</i> (prince of God) .....	33
<i>nega'</i> (assault) .....	50
<i>niddah</i> (abhorrent) .....	65
<i>niṣṣabim</i> , of Solomon .....	11
Nob (city of Gibeon or priests' quarter) .....	28, 30
<i>nokri</i> , <i>erez nokriyah</i> (alien, foreign land) .....	19
Og, king of Bashan .....	13, 15, 21, 29
<i>ohel mo'ed</i> (tent-temple) .....	22, 31, 64

	PAGE
'olah, 'olot (offering) .....	35, 46
Ophrah, capital of Abiezer .....	32, 34, 41, 46, 54
Oracle .....	7, 29, 33, 55, 57, 59, 64
Palestine, pre-Israelite .....	4, 31, 77
<i>peloni almoni</i> (Mr. So and So) .....	71
Penuel .....	38, 39, 46
Phineas, chosen Pontiff .....	21, 22
Provost-marshals of army .....	21, 40
<i>rebabot</i> (military division) .....	10
Rebellious Son (see also <i>ben sorer u-moreh</i> ) .....	35
<i>rib</i> (controversy) .....	50, 56
<i>ro'eh</i> (oracle witness) .....	55
<i>rosh</i> (chieftain) .....	42, 43
<i>rosh ha-'am</i> (high court) .....	47
<i>rashe ha-'am</i> (chieftains) .....	40
<i>rashim</i> of <i>alaphim</i> , identified with <i>nesiim</i> , .....	9
<i>rosh lekol yoshebe</i> Gilead (first of all the lords) .....	42
<i>Rosh ha-ma'oz</i> .....	34
Ruth, <i>ziqne ha-'ir</i> law in, .....	70-72
purpose of Book, .....	72
<i>sakir</i> (hired servant) .....	20
Samuel .....	12, 41, 46, 47
<i>sar, sarim</i> (officer) .....	10, 25, 38, 39, 47, 74
<i>sare</i> Judah .....	61
<i>sare</i> Succoth .....	38
<i>sarisim</i> .....	74
<i>sarah, dibber sarah</i> (missionary apostasy) .....	50-61, 79
Saul .....	8, 9, 10, 28, 30, 34, 45
<i>segullah</i> (treasure) .....	4
<i>seter, ba-</i> (in secret) .....	61
<i>sha'ar, she'arim</i> (gate, court, city) .....	27, 58
<i>shebatim</i> (tribes) .....	7, 8
Shechem, city-state- .....	16, 27, 31, 32
Shechem, the Hivite, .....	28
<i>shem</i> (Ark of the Covenant) .....	59, 60
Shiloh .....	22, 23, 31, 41, 42, 78
<i>shomea', shome'im</i> (witness) .....	42, 55, 58, 60
<i>shopheṭ, shopheṭim</i> (chieftain, judge) 11, 12, 21, 39, 40, 41, 42, 55, 56, 57, 80, 81	
Sihon, king of Amorites, .....	13, 15, 21, 29
Slavery .....	2, 21, 74, 75, 79
Slaves, release of, .....	74

	PAGE
Solomon .....	II, 19, 30, 46
<i>šom</i> (convocation, fast) .....	25
<i>sopher</i> (officer, scribe) .....	40
State, an aggregation of cities, .....	23-27, 81
Strangers, treatment of, .....	2, 18-24, 33, 78
Succoth .....	38, 39, 46
 Tamar .....	69, 71
tail-male .....	63
Tribal Organization .....	6, 9, 10, 11, 12, 14
 <i>wayebakeshu</i> (consulted) .....	35
<i>wayomru</i> (pronounced judgment) .....	35
Witnesses, false .....	56, 57
 <i>yabam</i> (see Levirate Marriage) ....	62, 63, 65, 66, 68, 69, 71, 72
<i>yerushah</i> (inheritance) .....	67
<i>yoshehim, yoshebe</i> (magnates) .....	29, 47
 <i>Zebahim</i> (offerings) .....	46
Zedekiah-statute .....	74, 76
<i>sekenim</i> (elders, magnates) ..4, 14, 29, 33, 39, 42, 43, 47, 69, 70, 71	
<i>ziḳne ha-'ir</i> (elders of the city)	
33, 35, 36, 37, 39, 47, 48, 49, 50, 51, 61, 68, 69, 70, 74, 75, 76, 77	
79, 80, 81	
jurisdiction of, political .....	42 ff.
ecclesiastical .....	46
municipal .....	47
judicial .....	48
<i>ziḳne Jabesh</i> ' .....	48
Zelophehad, daughters of .....	64, 66, 67
<i>zolel we-sobe</i> (glutton and drunkard) .....	52, 54
 Hebrew Words Considered (which see)	
<i>aḥuzzah; alaphim; 'am; 'am ha-areš; 'amad 'al; anashim;</i>	
<i>arur; 'asarot; bamah; banot; be'alim; bekor; ben sorer</i>	
<i>u-moreh; berit; bet ab; bet elohim; dallim; dayan; deror;</i>	
<i>'ed; 'edah; eleph; em; ezrah; gebarim; ger; ger we-toshab;</i>	
<i>ge'ullah; go'el; go'el ha-dam; goyim; hai JHVH we-hai adoni</i>	
<i>ha-melek; ḥaliṣah; ḥamishim; ḥammushim; ḥaradah;</i>	
<i>ḥašerim; ḥawwot; ḥeleḳ; ḥerem; 'ir melukah; ish; ish zar,</i>	
<i>(ḳallel); ḳašin; ḳiddeshu; kohanim; kol ha-'am; kol 'am ha-areš;</i>	
<i>kol ha-'edah; kol ish Israel; kol Israel; kopher; leḳayem kol</i>	
<i>dabar; liphneh JHVH; liphneh ha-kohanim; mal'ak JHVH;</i>	

*maṭṭot; meḥoḳeḳ; melek; me'ot; met; midbar; migdal;*  
*migrash; mishneh; mishpāḥah; mishpaṭ; mispāḥ; moreh;*  
*na'ar; nabi; naḥalah; nasi; nega'; niddah; niṣṣabim; nokri;*  
*ohel mo'ed; 'olah; peloni almoni; rib; ro'eh; rosh; rosh*  
*ha-'am; rosh lekol Israel; sakir; sar; sarisim; sarah, dibber*  
*sarah; segullah; ba-seter; sha'ar; shebaṭim; shem; shomea';*  
*shopheṭ; ṣom; sopher; wayebāḳeshu; wayomru; yabam;*  
*yerushah; yoshevim; zebaḥim; zeḳenim; zīḳne ha-'ir; zolel*  
*we-sobe*





